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CONFLICTING
CIVIL CASES

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IN
THE TEXAS REPORTS,

FROM

DALLAM TO VOLUME 93, INCLUSIVE; SOUTH WESTERN REPORTER,
VOLUMES 1 TO 64; CIVIL APPEALS, VOLUMES 1 TO 24, INCLUSIVE;
WHITE & WILLSON, VOLUMES 1 TO 4, INCLUSIVE; UNREPORTED
CASES, VOLUMES 1 AND 2, BUT NOT INCLUDING CASES
CITED IN FIRST VOLUME, CONFLICTING CASES; TEXAS
COURT REPORTER, 2 VOLUMES; *Also a Table of
Cases Decided by the Several Courts of Civil
Appeals and Passed on by the
Supreme Court.*

VOLUME II.

COMPILED, ARRANGED AND ANNOTATED

BY

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AND

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KANSAS CITY, MO.

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EXPLANATION.

The abbreviations used in this book are as follows:

T.	Texas Supreme Court Reports.
Dal.	Dallam's Reports.
S. W.	Southwestern Reporter.
C. A.	Texas Civil Appeals Reports.
W. & W.	White & Willson Civil Cases.
U. C.	Posey's Unreported Cases.
T. C. R.	Texas Court Reporter.

PREFACE.

It has been our effort to include herein all conflicting cases down to the adjournment of the courts in June, 1901, *excepting those included in the first volume of King's Conflicting Cases*; and in the Table of Cases at the end of the volume are given all the cases in which writs of error have been refused or granted, or in which questions have been certified, down to the adjournment of the appellate courts in June, 1901, together with a reference to the Supreme Court and Court of Civil Appeals opinions in such cases.

In the arrangement of the cases, the overruled case has been placed first and when a case is cited as in conflict with another, though not directly overruling it, the later cases, as a rule, have been placed second, but it will be found by reference to the notes in some cases, that the first case is regarded as the better law.

Cases in which writs of error have been granted and Courts of Civil Appeals opinions reversed have not been included in the main body of the work, as in conflict, because the Supreme Court having final jurisdiction therein its opinion must be regarded as final. The table at the end of the volume includes a reference to such cases.

W. W. KING.

S. J. BROOKS.

San Antonio, Texas, October 1, 1901.

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CONFLICTING CASES.

§ 1. *Adams v. Fisher*, 75 T. 657 (6 S. W. 772).

Where the charter of a city authorizes its city council to improve a street whenever it deems such improvement necessary for the public interest, and authorizes it to impose a part of the cost of the improvement on the owners of the abutting property, the passage of an ordinance by the council, under the power granted in the charter, is conclusive of the propriety of the improvement, and of the question of benefit to the owners of abutting property. It is not essential to the validity of the tax that an actual enhancement in value or other benefit to the owner be shown.

Overruled: *Hutcheson v. Storrie*, 92 T. 685 (51 S. W. 848).

Following the case of *Village of Norwood v. Baker*, 172 U. S. 269 (19 Sup. Ct. Reports, 187), the case of *Adams v. Fisher* is overruled, and the following propositions are maintained:

(1) The legislature of a state can not authorize a municipal corporation to assess, upon abutting property, the cost of a public improvement in a sum materially exceeding the special benefits which that property may derive from the work.

(2) The legislature of a state can not confer upon a municipal corporation, the authority to make such assessment conclusive upon the owner without giving an opportunity to contest the question of benefits.

Such laws are in violation of article 1, sections 17 and 19, of the constitution of Texas, and of the fourteenth amendment to the constitution of the United States, and in order for a law, authorizing a city to make assessments on abutting property-owners for street improvements, not to come within the constitutional inhibitions, it must afford the property-owner an opportunity to be heard and empower the city authorities to consider the question of benefits.

§ 2. *Allen v. Pierson*, 60 T. 604.

Mere irregularity in making a judicial sale, when taken in connection with gross inadequacy of consideration, will not, alone, as a matter of law, be held sufficient ground for vacating an execution sale in the absence of facts showing that the irregularity conduced to the inadequacy of the sum bid.

Questioned: *Martin v. Anderson*, 4 C. A. 111 (23 S. W. 290).

Where the defendant in execution is without fault and moves promptly to set aside the sale tendering to the purchaser the money paid by him for the land, and shows a gross inadequacy of price, coupled with irregularities or other circumstances capable to produce the result complained of, he is entitled to the equitable relief sought until it is further made to appear that in fact the alleged irregularities did not conduce to the alleged inadequacy.

NOTE.—*Irvin v. Ferguson*, 83 T. 491 (18 S. W. 820); *Weaver v. Nugent*, 72 T. 280 (10 S. W. 458); *Pearson v. Flanagan*, 52 T. 280; *Taul v. Wright*, 45 T. 394; *Chamblee v. Tarbox*, 27 T. 140; *Ward v. Dunn*, 70 T. 233 (11 S. W. 116); *Pridgen v. Adkins*, 25 T. 395; *Earle v. Thomas*, 14 T. 583; *Railroad v. Morris*, 67 T. 703; *Breckenridge v. Cobb*, 2 C. A. 169; *House v. Robertson*, 89 T. 686 (36 S. W. 251).

§ 3. *Alstin v. Cundiff*, 52 T. 453.

When the defendant, in accordance with rule 31 governing practice in the district courts, admits that the plaintiff has a good cause of action as set forth in the petition, but replies by plea in the nature of a plea in confession and avoidance, he is entitled to open and conclude in adducing evidence and in the argument; but in such case the admissions should specify the allegations admitted and should not be in general terms.

Limited: *Smith v. Traders Natl. Bank*, 74 T. 541 (12 S. W. 113-221).

Before the trial of a cause the defendant admitted on the record that "the defendant had a good cause of action as set forth in the petition, except in so far as it might be defeated in whole or in part by the facts of the answer constituting a good defense, which might be established on the trial." *Held*: The admission must be construed to mean that the defendant admitted every fact alleged in the petition which it was necessary for the plaintiff to establish in the first instance to enable him

to recover, but did not admit allegations in the petition which merely denied new matter alleged in the answer, the burden of the proof of which was upon the defendant.

NOTE.—*Sanders v. Bridges*, 67 T. 94; *Ayres v. Lancaster*, 64 T. 311; *Graham v. Gautier*, 21 T. 120; *Dugey v. Hughes*, 2 W. & W., sec. 4; *Milburn Wagon Co. v. Kennedy*, 75 T. 213 (13 S. W. 28); *Blooming Grove Co. v. First Nat. Bank*, 56 S. W. (C. A.) 552; *Smith v. Eastham*, 56 S. W. 218; *Johnson v. Clements*, 54 S. W. 272; *Ins. Co. v. Baker*, 31 S. W. 1076; *Harris v. Pickney*, 55 S. W. 38.

§ 4. *Ammons v. Dwyer*, 78 T. 639 (15 S. W. 1049).

Although a recorded deed is defectively acknowledged, a certified copy of it may be introduced in evidence as a circumstance to show the existence of such a deed.

Overruled: *Heintz v. Thayer*, 92 T. 658 (50 S. W. 929; 51 S. W. 640).

Under Revised Statutes 1895, article 2306, providing that certified copies of records of public officers shall be admitted in all cases where the records themselves are admissible, a certified copy of the record of a deed, the acknowledgment of which is insufficient to entitle it to registration, is inadmissible in evidence, because the thing copied is not the record of a public office.

NOTE.—*Fordtran v. Perry*, 60 S. W. (C. A.) 1000, seems to follow the rule announced in *Ammons v. Dwyer*.

See §§ 174, 214.

§ 5. *Anderson Co. v. Kennedy*, 58 T. 616.

The district court has jurisdiction to afford relief by injunction, without reference to the amount in controversy.

Contra: *Lazarus v. Swafford*, 15 C. A. 367 (39 S. W. 389).

Under article 5, of the constitution as amended, the county court has exclusive jurisdiction to issue an injunction to restrain a sale of personal property for taxes amounting to more than \$200 and less than \$500.

NOTE.—*The decision in Lazarus v. Swafford is based on the amendment of article 5, constitution, made since the decision in Anderson Co. v. Kennedy. Prior to the amendment, the county court, it was held, could issue writs of mandamus and injunction, only when necessary to enforce its jurisdiction.*

In *Dean v. State*, 88 T. 296 (30 S. W. 1041, and 31 S. W. 185), it is held that the amendment "enlarges the power of the county court to issue writs of mandamus and injunction." In *State ex rel. Johnson v. Hanscomb*, 90 T. 321 (37 S. W. 601), which was a suit by mandamus in the district court to compel the county judge to execute and deliver a warrant for \$203.40, the application for a writ of error was dismissed on the ground that the suit might have been brought in the county court. Under the decision of *Lazarus v. Swafford*, *supra*, the district court had not jurisdiction in *State v. Hanscomb*, because the amount being \$203, the county court alone had jurisdiction to issue the writ. It seems from the opinion of the supreme court on rehearing, that the question was not raised. Justice Gaines in his opinion does not hold that the district court did not have jurisdiction, but simply that the case might have been brought in the county court. The writers have been unable to find any decision of the supreme court to the effect that where the amount is between \$200 and \$500, the jurisdiction of the county court is exclusive in both mandamus and injunction cases, but this is the express ruling of the court of civil appeals in *Lazarus v. Swafford*, where the amendment to the constitution seems to have been carefully considered. In other words it is held that in any case falling within the jurisdiction of the county court by reason of the amount, it is the sole tribunal that can issue writs of injunction and mandamus.

See, also, *Winstead v. Evans*, 33 S. W. (C. A.) 580, where the same court that decided *Lazarus v. Swafford*, held that the district court had no jurisdiction to compel a justice of the peace to enter a final judgment. This decision, however, is based on the ground that the writ was in the enforcement of the county court's jurisdiction, and, hence that court would have had exclusive jurisdiction, even prior to the amendment of the constitution.

In *Smith v. Kitchens*, 40 S. W. (C. A.) 42, it is held that the district court has jurisdiction to enjoin an execution in judgment of a justice court, because the amount is under \$200.

In *G. C. & S. F. Ry. Co. v. Blankenbeckler*, 13 C. A. 249 (35 S. W. 332), it was held that the district court had jurisdiction to enjoin a justice court judgment for less than \$20, and it was suggested that the county court might also have concurrent jurisdiction in such a case.

See also *Beckham v. Burney*, 31 S. W. (C. A.) 720.

§ 6. *Ann Berta Lodge v. Leverton*, 42 T. 18.

Where a party has gone into possession of land under a parol contract of sale, in order for him to be entitled to specific performance of the contract, he must have expended, in permanent improvements, a greater amount than the value of the rent, and if he has gained more by his possession than he has expended in improvements, they will not avail him as a ground of specific performance.

Contra: *LaMaster v. Dickson*, 43 S. W. (C. A.) 911.—Writ of error refused, 45 S. W. (Sup.) 1.

It is not necessary that the value of improvements should exceed the rents in order to take a parol sale out of the statute of frauds. *Ann Berta Lodge v. Leverton*, and other cases following it, have not been accepted as authority on this point since the decision of *Wells v. Davis*, 77 T. 636 (14 S. W. 237).

NOTE.—*The proposition announced in Ann Berta Lodge v. Leverton, that the value of the improvements should exceed the rents, was hardly necessary to a decision of that case, because it appeared from the testimony that all the improvements, except of a very trivial character, were made after a repudiation of the contract.*

The later decisions are in accord with LaMaster v. Dickson. See Wells v. Davis, 77 T. 636 (14 S. W. 237); *Bradley v. Owsley*, 74 T. 72 (11 S. W. 1053); *Baker's Exr. v. DeFreese*, 2 C. A. 524 (21 S. W. 962).

Eason v. Eason, 61 T. 227, and *Wooldridge v. Hancock*, 70 T. 18, state the same rule as *Lodge v. Leverton*, but the comment above made with reference to the latter case also applied to *Eason v. Eason*.

Judge Henry states the following rule in Bradley v. Owsley, 74 T. 72, which seems to be in accord with the later decision, viz.: "Such possession with payment of the purchase money and improvements of a permanent character enhancing the value of the premises, or such possession without improvements connected with other circumstances making the transaction a fraud upon the purchaser, if the agreement is not enforced, will take the case out of the statute of frauds.

See also *Morris v. Gaines*, 82 T. 255 (17 S. W. 538).

§ 7. *Atchison T. & S. F. Ry. Co. v. Reilly*, 30 S. W. (C. A.) 491.

Where a plea of privilege is continued at the first term without prejudice, and it is afterwards continued for several terms, and at a later term the court refuses to consider it, to which refusal a bill of exception is reserved, and at a subsequent term, defendant goes to trial without further action on the plea, it is waived.

Contra: *Dorroh v. McKay*, 56 S. W. (C. A.) 611.

See *Weekes v. Sunset Brick & Tile Co.*, § 516.

§ 8. *A. T. & S. F. Ry. Co. v. Worley*, 25 S. W. 478.

The court of civil appeals can not consider an assignment of error based upon the action of the trial court in giving, qualifying or refusing charges, when such action was not specified in the motion for new trial in the district court.

Contra: *Western Union Tel. Co. v. Mitchell*, 89 T. 441 (35 S. W. 4); *Id.*, 33 S. W. 1016 (12 C. A. 262).

The court of civil appeals can consider an assignment of error based upon the action of the trial court in giving, qualifying, or refusing charges, when action was not specified in the motion for new trial in the district court.

NOTE.—*The two decisions in conflict were decided by the courts of civil appeals. On account of the conflict, the supreme court granted a writ of error and sustained the last case.* 89 T. 441.

See *City of Ysleta v. Babbitt*, § 71.

§ 9. *Avery & Sons v. Zander*, 77 T. 207 (13 S. W. 971).

An affidavit for attachment should show what part of the debt is due and what is not due, and where it is averred in the affidavit that the debt is all due and such is not the fact, the writ of attachment should be quashed.

Overruled: *Gembel v. Gomprecht*, 89 T. 497 (35 S. W. 470).

When the affidavit made by the plaintiff complies with the statute, and the writ is issued and levied, the lien of the attachment attaches to the property, and the court must foreclose it, although the allegations may not be true in fact. The right to a writ of attachment exists in favor of a plaintiff, whether his debt be due or not. The statute has not prescribed that he shall express in his affidavit, whether the debt is due in whole or

in part, at the time of commencing suit, and the effect of the decisions which so hold is to engraft upon the statute a requirement not expressed in the language, nor implied in its terms.

NOTE.—Other cases overruled by *Gembel v. Gombrecht*, on the same point are, *Cox v. Reinhardt*, 41 T. 591; *Sydnor v. Totman*, 6 T. 190; *Evans v. Tucker*, 59 T. 250; *Kennedy v. Morrison*, 31 T. 217.

§ 10. *Ball v. Collins*, 66 T. 467 (5 S. W. 622).

A sale of property by an administrator, even though afterwards confirmed by the court, is invalid unless an order of such court authorizing the sale was previously entered.

Contra: *Arnold v. Hodge*, 20 C. A. 211 (49 S. W. 714).

Such a sale is not invalid although there was no order of sale. It should be conclusively presumed from the order of confirmation of sale, that the sale was made in accordance with law.

NOTE.—In *Ball v. Collins* the suit for the property was brought immediately after the sale, and under our statute (article 1853), which provides that unless orders relating to the estate of decedents are entered on the records they shall be void, it is difficult to see how it can be conclusively presumed that an order of sale was made or even how such an order could be shown, except by the record, if it was made after the passage of the statute referred to.

See *Blackwood v. Blackwood's Est.*, 92 T. 478 (49 S. W. 1045).

§ 11. *Ball v. Presidio County*, 27 S. W. 702.

A law will be held unconstitutional as having been passed at a special session of the legislature, the call for which, by the governor, contained no message authorizing a law in reference thereto, when the only evidence to that effect is a copy of the message convening the legislature, and the senate journal disclosing no such message.

Contra: *Manor Casino v. State*, 34 S. W. 769.

The constitution provides that where the legislature shall be convened in special session, there shall be no legislation on subjects other than those designated in the proclamation of the governor, calling such session, or presented to them by the governor, is mandatory and an act passed by the legislature re-

lating to a subject not mentioned in the proclamation is in violation of the constitution, and therefore void. *The courts will take judicial knowledge of the proclamations, messages and public communications of the governor to the legislature.*

NOTE.—*Williams v. Taylor*, 83 T. 667 (19 S. W. 156).

§ 12. *Bank v. Randall*, 1 W. & W., sec. 975.

Where a check is drawn on a bank there is an implied consent of the bank to such transaction, creating a privity of contract between the payee and the bank, and such payee may maintain an action thereon against the bank.

Contra: *House v. Kountze*, 17 C. A. 402 (43 S. W. 561).

See *Doty v. Caldwell*, § 110, and note.

§ 13. *Barnes v. Jamison*, 24 T. 362.

The appellant assigned as error the charge given by the court. *Held:* The error of which the appellant's counsel complains, related principally to the instructions which, he says, were given in the court below. By an examination of the record, we perceive that the instructions, to which appellant's counsel refers, did not bear the signature of the judge who presided at the trial in the court below. The statutes require the instructions which the judge gives to the jury to be signed by the judge, and this court has frequently declined to consider instructions which did not bear the judge's signature.

Contra: *Parker v. Chancellor*, 78 T. 524 (15 S. W. 157).

The failure of the district judge to sign the charge which was filed by the clerk, read to the jury and fully identified, is not material, and is not ground for reversal.

NOTE.—*The statute referred to reads as follows:* "The charge shall be in writing and signed by the judge, and he shall read it to the jury in the precise words in which it is written; he shall not charge or comment on the weight of evidence; he shall so frame the charge as to distinctly separate the questions of law from the questions of fact; he shall decide on and instruct the jury as to the law arising on the facts, and shall submit all controverted questions of fact solely to the decision of the jury."

The case of Longino v. Ward, 1 W. & W., sec. 522, is in accord with the first case.

§ 14. *Barrett v. Barrett*, 31 T. 344.

In a suit in trespass, to try title against an administrator for land belonging to the estate which he represented, it is impossible for the court to adjudicate upon the title without making the heirs at law of the intestate, upon whom the descent had been cast, parties defendant. They were necessary parties and ought to have been made so before any adjudication was made upon the title.

Overruled: *Gunter v. Fox*, 51 T. 383.

In a suit against an administrator for land claimed by him as the property of the estate he represents, the heirs are not necessary parties, and so much of the opinion in *Barrett v. Barrett* which holds that it was impossible for the court to adjudicate upon the title, without making the heirs at law of the intestate upon whom the descent had been cast, parties, is in conflict with this, and other better considered cases.

NOTE.—See *King's Conflicting Cases*, vol. 1, sec. 152, for cases in accord with the overruled and overruling cases.

In *Lawson v. Kelly*, 82 T. 462 (17 S. W. 717), the cases are reviewed and *Gunter v. Fox* approved as the law prior to 1870. Since that date the statute has provided that the heirs are necessary parties defendant in suits involving the title to real estate. R. S. 1198.

§ 15. *Barton v. Exchange Bank*, 2 W. & W., sec. 711.

Article 272 relates especially and exclusively to the defenses of a want of and a failure of consideration; and, therefore, these particular defenses can be interposed only in the instances named in that article; while article 267 relates to and embraces all other defenses, except those of a want or failure of consideration.

Overruled: *Ablowich v. Greenville Natl. Bank*, 22 C. A. 272 (54 S. W. 794).

Articles 266, 267, relating to non-negotiable instruments alone, and declaring that any such instruments may be assigned, and that the assignee may sue thereon, but that he shall allow every discount and defense against the same which it would have been subject to in the hands of any previous owner before notice of the assignment was given, control article 272, providing that a failure or partial failure of consideration of "any" written instrument may be pleaded against the original holder,

or one who has taken it after maturity, or with knowledge of such failure.

§ 16. *Bass v. James*, 83 T. 110 (18 S. W. 336).

In a suit to recover for a deficiency in the number of acres of land sold, on account of false representations of the vendor as to the number of acres, limitation runs from the date of the sale, and the cause of action is barred in two years.

Contra: *Blount v. Bleker*, 13 C. A. 227 (35 S. W. 863).

Under the present Revised Statute, such causes of action are covered by article 3207, and are not barred until four years have elapsed.

Justice Williams refers to *Bass v. James* and says the two years' statute was there applied, but that the decision in *Smith v. Fly*, 24 T. 349, was followed without a consideration, so far as the opinion shows, of the effect of the change in the statute.

NOTE.—*Smith v. Fly*, 24 T. 349, was decided under a different statute.

§ 17. *Battle v. Carter*, 44 T. 485.

An action may be maintained against a non-resident who has been cited by publication without seizing his property by writ of attachment.

Contra: *York v. The State*, 73 T. 651 (11 S. W. 869).

Since the decision in *Pennoyer v. Neff* (95 U. S. 723), it must be held that service made without the state is insufficient to confer jurisdiction on a court of this state to render a mere personal judgment against one a citizen and resident in another state.

NOTE.—*Stewart v. Anderson*, 70 T. 595 (8 S. W. 295). In *Milburn v. Smith*, 11 C. A. 678 (33 S. W. 910), it was held that the attachment might be issued after the publication of the citation was complete and before the return day.

§ 18. *Battle v. Eddy*, 31 T. 368.

Defendant accepted service by indorsement upon petition made on the twenty-first day of August, 1866. The petition was filed on August 24, 1866. *Held*: That the acceptance of service and waiver of process, prior to the institution of the suit, will support a judgment by default rendered on the first day of the term.

Contra: Kennedy v. McCoy, 46 T. 220.

A party accepting service of the petition and waiving process does not therefore waive his right to defend the action, and where the petition was not filed on the first day of the term, it was error to take judgment by default at such term.

NOTE.—Glenn v. Shelburne, 29 T. 125.

Under our present statute there can be no valid waiver or acceptance of service until after the suit has been filed.

O'Neal v. Clymer, 52 S. W. 619.

§ 19. Beasley v. Boothe, 3 C. A. 98 (22 S. W. 255).

An agreement to extend the time of payment of a note, in consideration that the maker will pay the payee a certain other matured debt owing by the former to the latter, and pay the interest on the note, is *nudum pactum*, and the surety on the note is not thereby released.

Contra: Benson v. Phipps, 87 T. 578 (29 S. W. 1061).

An agreement between the maker of a note and the payee that the latter will extend the time of payment, and that the former will pay interest during the time extended, is binding without additional consideration, and will release a surety who does not consent to the extension.

NOTE.—Woodell v. Streeter, 39 S. W. 169; Angel v. Miller, 16 C. A. 679 (39 S. W. 1092); Knapp v. Mills, 20 T. 123; Payne v. Powell, 14 T. 600; Hoerr v. Coffin, 1 W. & W., sec. 185; Terrell v. Banack, 2 W. & W., sec. 667; Mann v. Brown, 71 T. 241; Broune v. Fontaine, 3 C. A. 227; Clai-borne v. Berge, 42 T. 106.

§ 20. Bell v. Brown, 33 S. W. (C. A.) 303.

In an appeal from the justice to the county court, the costs must be included in the judgment and the appeal bond must be double the amount of the judgment and costs.

Contra: Yarborough v. Collins, 91 T. 306 (42 S. W. 1053).

The appeal bond from justice to county court is sufficient, if double the amount of the judgment, exclusive of costs.

§ 21. Bell v. Faulkner, 84 T. 187 (19 S. W. 480).

The district court has jurisdiction to try a suit for an office, where the value of the office is within the jurisdiction of the district court.

Contra: Dean v. State, 88 T. 290 (30 S. W. 1047).

The district court has jurisdiction in a suit by information in the nature of a quo warranto in the name of the state of Texas at the relation of a claimant against the incumbent to try the title to the office so claimed, although the value of the office is less than five hundred dollars.

NOTE.—*The following authorities are in accord with the overruled case:* Milligan v. Weatherford, 54 T. 388; McAllen v. Rhode, 65 T. 348; Honeycut v. State, 75 T. 237 (12 S. W. 106); State v. De Gress, 53 T. 387; East Dallas v. State, 73 T. 370 (11 S. W. 1030); Little v. State, 75 T. 616 (12 S. W. 965); State v. De Gress, 72 T. 242 (11 S. W. 1029).

§ 22. Bell v. Gammon, 3 W. & W., sec. 405.

Bell as principal, and Gammon as surety, executed a note payable to Conner. The note was also secured by a mortgage. Gammon, the surety, paid the note and sued upon it against a purchaser, to foreclose the mortgage. *Held:* That he was not only subrogated to the security for the debt, but to the very debt itself, and to have it assigned to him upon which he could maintain an action.

Overruled: Faïres v. Cockrill, 88 T. 428; (35 S. W. 191).

Cockrill, Faïres and others executed a written obligation to the S. A. & A. P. Ry. Co., by which they agreed to secure right of way and depot grounds, and to pay for the same, to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract and sued Faïres and the other signers for their share of the money paid. *Held:* That the railway company could have maintained an action thereon, but Cockrill could not do so, for his cause of action was upon the implied promise of Faïres and others to indemnify him for whatever he should pay in their behalf, and his action was barred by the statute of limitation of two years.

NOTE.—*See note, Sublett v. McKinney, § 453.*

§ 23. Bemis v. Wells, 10 C. A. 626 (31 S. W. 827).

Sureties on a replevin bond in a sequestration proceeding, are liable if the suit is decided against the defendant, though the writ of sequestration be quashed.

Contra: Mitchell v. Bloom, 91 T. 634 (45 S. W. 558).

See *Sexton v. Heidman*, § 418.

§ 24. *Bergstrom v. Bruns*, 24 S. W. 1098.

A defendant does not waive his plea of privilege of being sued in the county of his domicile by a continuance of the cause at his request.

Contra: Floyd v. Gibbs, 34 S. W. 154.

Where a defendant is sued in a county in which he does not reside, and pleads his plea of privilege and then requests a continuance of the cause in order that he might answer plaintiff's amended petition, and the cause was thereupon continued, *held* that he submitted himself to the jurisdiction of the court and waived his right to be sued in the county of his residence.

NOTE.—*Burnley v. Cook*, 13 T. 586; *Womack v. Sheldon*, 31 T. 592; *Stevenson v. Ry. Co.*, 42 T. 162; *Peveler v. Peveler*, 54 T. 56; *State v. Snyder*, 66 T. 695; *Blum v. Strong*, 71 T. 329; *McDonald v. Blount*, 2 W. & W., sec. 344; *Turman v. Robertson*, 3 W. & W., sec. 215; *Green v. Brown*, 4 W. & W., sec. 162; *Aiken v. Bank*, 4 W. & W., sec. 254; *Ry. v. Reilly*, 30 S. W. 491; *Good v. Caldwell*, 11 C. A. 515 (33 S. W. 243).

The principle announced in the overruling case appears to be too broad, for if the defendant, when sued out of the county of his domicile, pleads his privilege, and then has the cause continued in order to obtain proof to support his plea, this should not operate as a waiver of his plea.

See *Weekes v. Sunset Brick & Tile Co.*, § 516.

§ 25. *Berrendo Stock Co. v. McCarty*, 85 T. 412 (21 S. W. 598).

Sections 9 and 10 of the act of April 13, 1883, provide for the forfeiture of the purchase of public school lands upon non-payment of interest by March first of each year, by indorsement upon the purchaser's obligation without a judicial ascertainment of the facts. The acts of February 16, 1885, and February 23, 1885, are construed as repealing the provisions of the act of 1883, authorizing a summary forfeiture. There was, therefore, no law in force between August first and November 15, 1887, under which purchases of land under the act of 1883, could be declared forfeited for non-payment of interest.

Limited: *Fristoe v. Blum*, 92 T. 85 (45 S. W. 998).

The act of April 1, 1887, section 11, was not called to the attention of and was not considered by the supreme court in the case of *Stock Co. v. McCarty*.

NOTE.—*Anderson v. Bank*, 86 T. 618 (28 S. W. 344).

§ 26. *Bexar B. & L. Ass'n v. Amanda Robinson*, 78 T. 163 (14 S. W. 227).

Where a party seeks to recover back money paid on a usurious contract, the measure of recovery is the difference between the debt with the highest lawful rate of interest added, and the amount of payments made thereon, computed as partial payments.

Contra: (Changed by Statute.) *Smith v. Chilton*, 39 S. W. 287.

Under article 3106, Revised Statutes 1895, a person who has paid usurious interest may recover double the whole amount of the interest paid and not merely double the excess above the lawful amount.

NOTE.—*Smith v. Stevens*, 81 T. 461 (16 S. W. 986), and *Garza v. Sullivan*, 30 S. W. 240, in accord with *Ass'n v. Robinson* arose prior to the Act of 1892 (article 3106, Revised Statutes 1895).

§ 27. *Bills v. State*, 42 T. 305.

The act of May 28, 1864, entitled, "An act to punish unlawful interference with private property, or private rights," embraced more than one subject, and was repugnant to the provisions of the constitution.

Questioned: *Clark v. Finley*, 93 T. 177 (54 S. W. 343).

See *State v. Shadle*, § 439.

§ 28. *Bingham v. Barley*, 55 T. 281.

In order to maintain a suit for the recovery of land conveyed by the plaintiff, during his minority, he must tender back the consideration received.

Limited: *Bullock v. Sprowls*, 93 T. 188 (54 S. W. 661).

See *Cummings v. Powell*, § 97.

§ 29. *Bingham v. Thompson*, 34 S. W. (C. A.) 358.

Where an obligation given by one defendant is payable in

the county where suit is brought and secured by a lien on property, another party in possession of and claiming the property may be joined in such suit though neither defendant resides in that county.

Contra: Behrens Drug Co. v. Hamilton, 92 T. 284 (48 S. W. 5).

The fact that one defendant has given an obligation payable in a county other than his residence, and secured by a lien on property, does not authorize the joining of another party, in possession of and claiming the property, in a suit in the county where the note is payable, neither defendant being a resident of that county.

NOTE.—*Fermier v. Brannan*, 21 C. A. 543 (53 S. W. 702); *Railway v. Blount*, 3 C. A. 282 (22 S. W. 930).

See § 365.

§ 30. *Birge v. Wanhop*, 21 T. 478.

A slave, who was hired for a year, was accidentally drowned before the end of the term for which he was hired. In an action for the hire of the slave, *held*, the defendant was entitled to an abatement of the hire for the unexpired part of the term.

Contra: Scherer v. Upton, 31 T. 617.

See *McLemore v. McClellan*, § 316.

§ 31. *Bishop v. Lusk*, 8 C. A. 30 (27 S. W. 306).

The acquisition of property during the marriage, by limitation, is gained by onerous title, which makes it community property, whether the possession be held by the husband, the wife, or by both jointly. The title to such property is, however, not acquired until the full period of limitation has run and until that time, neither spouse has any community, or interest in it.

Contra: T. & N. O. Ry. Co. v. Speights, 59 S. W. 572.

The acquisition of property by limitation, during the marriage, makes it community, but when prescription begins before, and ends during the marriage, the title in the community takes effect as of the time when the prescription began.

NOTE.—A writ of error was granted in *Railway v. Speights* and the case reversed by the supreme court on another ground (60 S. W. 659). The rule above announced was re-

ferred to but neither approved nor disapproved.

Nicholson v. Nicholson, 65 T. 281. *The principle announced in the first case is believed to be the better law, for the statute makes that community property which is "acquired" during the marriage, and property can not be said to have been acquired by limitation until the bar of the statute is completed. The character of title acquired by limitation is analogous to that acquired by pre-emption in so far as the community right is concerned, and in titles of that kind, our courts have held in Mitchell v. Nix*, 1 Posey, Unreported Cases, 126; *Roberts v. Trout*, 13 C. A. 70 (35 S. W. 323); *Votaw v. Pettigrew*, 15 C. A. 87 (38 S. W. 215), *that the parties have acquired no title either separate or community, until the full term of occupancy has expired. Their right to so much of the public domain is mere inchoate, and does not ripen into a title until the statutory period is completed, and if the wife dies before that time, no title will descend to her heirs.*

§ 32. *Blair v. Thorpe*, 33 T. 38.

Thorpe and wife executed a deed of trust on 640 acres of land on which was included, their 200-acre homestead. On the death of Thorpe, it was held that the widow was entitled to a 200-acre homestead, out of the unincumbered portion of her husband's estate.

Contra: McAllister v. Farley, 39 T. 552.

It was not the intention of the legislature to allow the surviving constituent of a family, where the homestead has been fixed upon community property of which such constituents may be part owners, on the death of the head of the family, to change the homestead so as to take the entire allowance of the share of the last community holder if it should operate to the prejudice of creditors or purchasers.

NOTE.—Ball v. Lowell, 56 T. 584; *Watts v. Miller*, 76 T. 16 (13 S. W. 16); *Clift v. Kaufman*, 60 T. 64; *Hoffmann v. Hoffmann*, 79 T. 192 (14 S. W. 915, 15 S. W. 475); *Green v. Crow*, 17 T. 180, *are in accord with the last case.*

Ragland v. Rogers, 34 T. 617, *is in accord with the first case.*

§ 33. *Blankenship v. Adkins*, 12 T. 536.

Where it becomes necessary to sue for the recovery of an amount remaining due upon an indebtedness originally within

the jurisdiction of the district court, if the suit is upon the original cause of action, it must be brought in that court, though the debt may have been reduced by payment to a sum within the jurisdiction of a justice of the peace. Where the original cause of action has been extinguished, and the amount remaining due within the jurisdiction of a justice of the peace has become the cause of action, it would be otherwise.

Contra: Duer v. Seydell, 20 T. 61.

A justice of the peace has jurisdiction of a balance of account which originally exceeded \$100, but which has been reduced to that amount by credits allowed by the plaintiff, who sues for balance only.

NOTE.—*Davis v. Pinkney*, 20 T. 340; *Clark v. Brown*, 48 T. 212; *Swigley v. Dixon*, 2 T. 192; *Cochran v. Kellum*, 4 T. 120; *Watts v. Harding*, 5 T. 386; *Tinsley v. Ryon*, 9 T. 405; *Alvey v. Murphy*, 25 T. 354.

The cases in conflict arose under the law prior to the adoption of the constitution of 1876, when the jurisdiction of the justice's court was one hundred dollars.

§ 34. Board v. T. & P. Ry. Co., 46 T. 316.

In this case the doctrine of *lis pendens* did not apply because the matter involved was county bonds, but it was intimated that *lis pendens* begins from the filing of the suit where reasonable diligence is had to obtain service of citation.

Contra: Smith v. Cassidy, 73 T. 165 (12 S. W. 13).

Lis pendens does not begin until service of process, or its publication in case of an absent defendant.

NOTE.—See *Walton v. Cope*, 3 C. A. 499 (22 S. W. 765), where held that the levy of an attachment is notice from the time of the levy, under the terms of the statute.

See *Allen v. Pierson*, 60 T. 608.

§ 35. Bonnell v. Prince, 32 S. W. (C. A.) 855.

Error not specified in the motion for a new trial will not be considered on appeal, although assigned as error.

Contra: Western U. Tel. Co. v. Mitchell, 89 T. 442 (35 S. W. 4).

See *City of Ysleta v. Babbitt*, § 71; *A. T. & S. F. Ry. Co. v. Worley*, § 8.

§ 36. *Bonney v. Waterhouse*, 35 T. 178.

A firm is competent to become a surety on an appeal bond.

Contra: *Burchard v. Cavins*, 77 T. 365 (14 S. W. 388).

A writ of error bond signed by two sureties, one of whom appears to be a firm, is insufficient when objected to. A firm name signed does not constitute a good security; first, it not appearing who are the members, so that judgment could be rendered against them; second, the bond is presumed to be signed by a member of the firm, but he may not have been authorized by the other members.

NOTE.—*Donnelly v. Elser*, 69 T. 282 (6 S. W. 583).

§ 37. *Bowser v. Cole*, 74 T. 222 (11 S. W. 1131).

Where a party claims under an alleged altered instrument and has been in possession of it, it affords a presumption that the alteration was made by him, and it devolves on him to show that he was not privy to the alteration.

Contra: *Rodriguez v. Haynes*, 76 T. 225 (13 S. W. 980).

On the production of an instrument, if it appears to have been altered, it is incumbent upon the party offering it in evidence to explain this appearance. If nothing appear to the contrary, it will be presumed to be contemporaneous with the execution of the instrument. If any ground of suspicion is apparent upon the face of the instrument the law presumes nothing, but leaves the questions of the time when, the person by whom, and the intent with which the alteration was made as matters of fact to be found by the jury, upon proofs to be adduced by the party offering it.

NOTE.—*Parker v. Glover*, 23 T. 472; *Woodward v. Suggett*, 59 T. 622; *Richers v. Helmcamp*, 1 W. & W., sec. 682; *National Bank v. Pritchard*, 2 W. & W., sec. 131; *Wells v. Moores*, 15 T. 522; *Peveler v. Peveler*, 54 T. 56; *Hamick v. Dodd*, 62 T. 75; *Thompson v. Thompson*, 12 T. 331; *Ricks v. Wofford*, 31 T. 415; *Houston v. Jordan*, 82 T. 353 (18 S. W. 702); *Stribbling v. Atkinson*, 79 T. 164 (14 S. W. 1054); *Deweese v. Bluntzer*, 70 T. 403 (7 S. W. 820); *Davis v. Crawford*, 53 S. W. (C. A.) 384.

§ 38. *Bourgeois v. Mills*, 60 T. 76.

Commissioners of review, to assess the damages for laying out a county road, are required in assessing damages to take into

consideration the advantages and disadvantages to the owner through whose land the road is run from opening the road, and the fact that they have not allowed him any damages affords no ground for exercising the revisory power of the district court. *Overruled*: Travis County v. Trogden, 88 T. 302 (31 S. W. 358).

The constitution requires that when land is taken for a public road the owner shall be allowed the intrinsic value of the *land taken* without reference to benefits he may derive from the improvement, and such claim can not be offset by such benefits; and where the jury of view allows him nothing in their report which is approved by the commissioners' court and the road ordered opened, he is entitled to an injunction from the district court restraining the opening of the road pending his appeal, from the action of the jury of view and commissioners' court, to the county court.

§ 39. Broadway v. Clepper, 1 W. & W., sec. 306.

When, on appeal from the justice's court to the county court, the transcript and original papers are not filed in the county court within the proper time, the appeal should be dismissed.

Contra: Petty v. Miller, 5 C. A. 308 (24 S. W. 330).

When a case is appealed from the justice's court and appeal perfected, the jurisdiction of the appellate court attaches when proper appeal bond is filed and approved, and it should not be dismissed on account of the negligence of the justice in failing to file the transcript and papers in the proper time.

NOTE.—See note to case of Petty v. Miller, § 378.

§ 40. Brown v. Chambers, 63 T. 131.

There is a broad distinction to be observed in the rules of construction applicable to deeds between private persons, and those of a sheriff made by virtue of an execution sale. As to the former, it will be presumed that the parties intended an interest to pass by the conveyance. As to the latter, no such presumption will be indulged in, but the conveyance must contain such a description as to enable the purchaser to find and identify the land.

Limited: Hermann v. Likens, 90 T. 449 (39 S. W. 282).

In regard to the description of the property conveyed, the rules are the same whether the deed be made by a party in his own right, or by an officer of the court. The policy of the law does not require courts to scrutinize the proceedings of a judicial sale with a view to defeat them. On the contrary, every reasonable intendment will be made in their favor, so as to secure, if it can be done consistent with legal rules, the object they were intended to accomplish.

NOTE.—*Smith v. Westall*, 76 T. 509 (13 S. W. 540); *Focke v. Garcia*, 41 S. W. 187.

§ 41. *Brown v. Crowe*, 29 S. W. 653.

The note sued on provided for ten per cent interest, to be paid semiannually, and in default of the payment of interest at maturity, the same to become principal and bear the same rate of interest: *Held*, the note sued on stipulated for a usurious interest, not because it provides for compound interest, but because it contracts for the payment of interest at a rate greater than that allowed by the statute.

Overruled by: *Crider v. San Antonio Real Estate, Building & Loan Ass'n*, 89 T. 597 (37 S. W. 237; 35 S. W. 1047).

A loan at the highest legal rate of interest was made, which was payable in monthly installments, in which was to be included the interest to the time of each payment. Notes for each installment, including the interest due at maturity of each note, were given: *Held*, that the fact that the notes provided for interest after maturity in case of default did not render the loan usurious, since, if the notes had been paid at maturity, the contract would have been legal, and, therefore, the default of the borrower would not make it illegal.

NOTE.—*Roane v. Ross*, 84 T. 46 (19 S. W. 339); *Lewis v. Paschal*, 37 T. 315; *Miner v. Banks*, 53 T. 559; *Andrews v. Hoxie*, 5 T. 194; *DeCordova v. Galveston*, 4 T. 482; *Mills v. Johnston*, 23 T. 330; *Martin v. The Bank*, 23 S. W. 1030; *Watson v. Mims*, 56 T. 450; *Mitchell v. Nabier*, 22 T. 21; *Crozier v. Stephens*, 2 W., sec. 802; *Building Co. v. Robinson*, 78 T. 169 (14 S. W. 259); *Jackson v. Hoover*, 3 C. A. 81 (21 S. W. 930); *Loan Ass'n v. Abbott*, 85 T. 220 (20 S. W. 118); 86 T. 467 (25 S. W. 620); *Gilder v. Hearne*, 79 T. 120 (14 S. W. 1031); *Loan Ass'n v. Griffin*, 90 T. 480 (39 S. W. 656); *Walters v. Loan Ass'n*, 29 S. W. 51.

There are some expressions in the Crider case that may seem in conflict with the later case of Parks v. Lubbock, 92 T. 635 (51 S. W. 322), but the questions involved in the cases are different. In Parks v. Lubbock the penalty provided in case of default was not merely interest on interest, but the highest rate on a much larger sum than was actually loaned.

§ 42. *Brown v. Mitchell, 75 T. 15 (12 S. W. 606).*

After the witness has testified fully as to the condition of deceased at the time the will was executed, it was not error to permit witness to give her opinion as to the mental capacity of deceased to make a will.

Overruled: Brown v. Mitchell, 88 T. 350 (31 S. W. 621).

See *Garrison v. Blanton, § 159.*

§ 43. *Brown v. Tyler, 34 T. 168.*

Punitive or vindictive damages are recoverable on the dissolution of an injunction when it is established that the injunction was sued out maliciously and without probable cause; but in the absence of such proof, the defendants are entitled to no more than simple compensation for the actual loss sustained by them in consequence of the injunction.

Overruled by: G. H. & S. A. R'y Co. v. Ware, 74 T. 47 (11 S. W. 918).

We would not be understood as holding that exemplary damages are recoverable for maliciously suing out an injunction. We incline to the opinion that such damages are not recoverable. The doctrine seems to be recognized in High on Injunctions, sec. 1665, but the only case cited in support of the text is *Brown v. Tyler, 34 T. 168*, in which the question was not involved. The statutory allowance of ten per cent damages in cases where the collection of money has been enjoined and the injunction procured for delay are in the nature of a penalty and tend to indicate that no other exemplary damages are to be allowed.

NOTE.—Jordon v. David, 20 T. 718; Hammond v. Belcher, 10 T. 272; Cox v. Taylor, B. Mon. 17-21; Crate v. Kohlsaat, 44 Ill. 460; Center v. Hoag, 52 Vt. 401. The overruling case is one where the railway company obtained an injunction to enjoin the collection of a moneyed judgment. The injunction was dissolved and the defendant in the writ sought to recover damages for personal expenses incurred in

attending court, and attorney's fees paid to procure the dissolution. Therefore, if Judge Gaines intended to hold, and it is so treated by the profession, that exemplary damages could not be recovered on the dissolution of an injunction other than to restrain the collection of money, his decision is obiter dicta.

§ 44. *Butterworth v. Kinsey*, 14 T. 495.

Where a plaintiff is a resident of this state, it is not essential to the jurisdiction of the court, in an action *in personam*, that the defendant should reside in or have property in this state, nor that the cause of action should have arisen therein.

Contra: *Scott v. Streepy*, 73 T. 547 (11 S. W. 532).

See *McMullen v. Guest*, § 319.

§ 45. *Byars v. Crisp*, 2 W. & W., sec. 708.

When an officer delivers his unconditional resignation to the proper authority, to take effect at once, it is effectual without acceptance, and the office is vacant. The resignation of the county judge created a vacancy in that office at once which could only be filled by the commissioners' court of the county, and during the existence of such vacancy there was no authority of law for the election of a special judge, and the judgment and other proceedings of the special judge are, therefore, void.

Overruled by: *McGhee v. Dickey*, 4 C. A. 104 (23 S. W. 404).

Under the constitution, article 16, section 17, providing that all officers in this state shall continue to perform the duties of their offices until their successors are qualified, the unconditional tender of his resignation by a county judge creates no vacancy where it is not accepted, and is afterwards withdrawn.

NOTE.—*Jones v. Jefferson*, 66 T. 576 (1 S. W. 903); *Edwards v. U. S.*, 103 U. S. 471; *Thompson v. United States*, 103 U. S. 486; *Badger v. United States*, 93 U. S. 599; *Hoke v. Henderson*, 4 Dev. 1; *State v. Clayton*, 27 Kan. 442; *United States v. Wright*, 1 McLane 509; *Williams v. Fitz*, 49 Ala. 402; *Norton Nauss v. Clark*, 3 Nev. 566; *Peoples v. Porter*, 6 Cal. 26; *State v. Boecker*, 56 Mo. 17; *Gates v. Delaware*, 12 Ia. 405; *State v. Hauss*, 43 Ind. 105; *Case v. Peoples*, 50 Ills. 432.

§ 46. *Byrd v. Ellis*, 35 S. W. (C. A.) 1070.

In a suit against an heir for a debt of the ancestor, a personal judgment may be recovered against the heir to the extent of the amount of assets received by him, and it is not necessary in such a suit to describe the estate received by such heir.

Contra: *Blinn v. McDonald*, 92 T. 604 (46 S. W. 787, 48 S. W. 571, 50 S. W. 931).

See note to *Mayes v. Jones*, § 329.

§ 47. *Cahn v. Jaffray*, 12 C. A. 324 (34 S. W. 372).

Though an affidavit for sequestration is defective, yet where the defendant is cast in the suit, judgment is properly rendered against the sureties in the replevin bond.

Contra: *Mitchell v. Bloom*, 91 T. 634 (45 S. W. 558).

Where the writ is quashed, the replevin bond falls with it.

See note to *Sexton v. Hindman*, § 418.

§ 48. *Cain v. Woodward*, 74 T. 549 (12 S. W. 319).

A sale of land made under an execution issued after the death of a sole defendant is not void, but merely voidable.

Contra: *Hooper v. Caruthers*, 78 T. 432 (15 S. W. 98).

A sale made under execution against a deceased person after his death, he being alive at the time judgment was rendered, is void in the sense that it is wholly inoperative to pass title to or against any one, and therefore may be attacked directly and collaterally.

NOTE.—*Hooper v. Caruthers* is followed in the late case of *Fleming v. Ball*, 60 S. W. 985, in which the supreme court refused a writ of error.

See note to *Taylor v. Snow*, § 458.

§ 49. *Calhoun v. G. C. & S. F. Ry.*, 84 T. 226 (19 S. W. 341).

Ring the bell or blowing the whistle in approaching a public crossing by a locomotive is a duty required by law. The failure to perform this duty is an act that may, in connection with other facts, be considered by the jury in determining if the operatives of the engine have been guilty of actionable negligence. But to say that the performance of this duty or the failure to observe it will, in the first instance, be sufficient evidence of care as will excuse it from liability, and

in the second instance be sufficient evidence of want of care as to charge it with liability, is to give to the statute that creates this duty an effect and meaning evidently not intended by the lawmakers. The court has the right to instruct the jury that it is the duty of the operatives of the engine, in approaching the public crossing, to ring the bell or blow the whistle; but it is a charge upon the weight of evidence if it instructs them that the failure to perform or not perform this duty shall be given a certain effect.

Limited: T. & P. Ry. Co. v. Lavery, 4 C. A. 74 (22 S. W. 1047).

In an action against a railroad company for an injury at a street crossing, where the case made by plaintiff and submitted by the court to the jury is based solely on the alleged inexcusable failure of defendant to observe the statutory requirements as to signals, it is not error, as charging on the weight of the evidence, to instruct the jury to find for plaintiff, if the accident occurred by reason of failure to give the statutory signals.

NOTE.—In accord with *Railroad v. Lavery and Railroad v. Matula*, 79 T. 582 (15 S. W. 573); *Railroad Co. v. Nixon*, 52 T. 27; *H. & T. Railway Co. v. Wilson*, 60 T. 142.

The language quoted from Calhoun v. Railway is dicta in so far as it relates to a failure on the part of a railway company to ring the bell on approaching public crossings—a duty required by statute. The charge there under consideration was one requested by the plaintiff to the effect that the ringing of the bell would not alone protect the railway company from the charge of negligence.

A writ of error was refused in Railway v. Lavery and it gives a correct statement of the law as well established by the supreme court.

§ 50. Calvert v. Roche, 59 T. 463.

Where a judgment debtor held the record title to land which he in fact held in trust for another party to whom he had conveyed the title by a deed not of record at the date of fixing the judgment lien against him (the trustee), the judgment creditor's rights are superior to those of the *cestui que trust* unless such creditor had notice of the deed—this is so, because the *cestui que trust*, after the execution of the deed, no longer claims, as such, an equitable right to the land, but he

then has the legal title by reason of the deed, and such legal title is subject to the registration laws.

Overruled: John B. Hood Camp Conf. Veterans v. DeCordova, 92 T. 202 (47 S. W. 522).

The rule laid down in Calvert v. Roche was hardly necessary to a decision of that case, and in conflict with the correct rule laid down in Blankenship v. Douglass, 26 T. 225.

The registration act makes the unrecorded deed void. If void, it is as if it did not exist. The creditor can not in the one breath claim that it passed no title to the grantee as to him, and in the next, when the grantee asserts an equity existing before the deed, maintain that the equity was extinguished by the void conveyance. The rights of the *cestui que trust* are superior to those of the judgment creditor, though he had no notice of the unrecorded deed; in other words, the execution of the unrecorded deed by the trustee does not change the rights of the *cestui que trust* so far as the judgment creditor is concerned.

NOTE.—*Brown Hardware Co. v. Marwitz*, 10 C. A. 458 (32 S. W. 78); *McKamey v. Thorp*, 61 T. 648; *Delespine v. Campbell*, 5 T. 4; *Ayers v. Dupree*, 27 T. 593; *Blankenship v. Douglas*, 26 T. 225; *O'Bertier v. Stroude*, 33 T. 522; *Grace v. Wade*, 45 T. 532; *Center v. Lambeth*, 59 T. 260; *Parker v. Coop*, 60 T. 111; *Ross v. Kornrump*, 64 T. 390.

§ 51. Cameron v. Romele, 53 T. 238.

The authority of courts will not be exercised to cancel a deed on the application of the vendor, when it is made for the purpose of evading the payment of just debts, and the same rule should apply when the conveyance was made with that motive, though under a mistake as to the liability of the vendor for the debt, caused by the fraudulent representation of the vendee.

Overruled: Rivera v. White, 2 T. C. Rep. 709.

A deed made in fraud of creditors passes title as between the parties thereto, and an agreement on the part of the grantee to hold in trust and to reconvey will not be enforced; but where there is no creditor there is no fraud, and, therefore, no policy of the law to prevent the enforcement of the trust. The motive with which such a conveyance is made and the fears by which it is prompted are of no importance unless there are creditors to be protected by the statute. When the

statute does not apply to the case, there is nothing to prevent the court from enforcing the rights of the parties as they are fixed by their agreements.

NOTE.—*Vandever v. Freeman*, 20 T. 333; *Ellis v. Valentine*, 65 T. 547; *Stevens v. Adair*, 82 T. 220 (18 S. W. 102); *Herndon v. Reed*, 82 T. 652 (18 S. W. 665); *Miller v. Koertge*, 70 T. 166 (7 S. W. 691); *Danzey v. Smith*, 4 T. 415; *Ribonson v. Martell*, 11 T. 155; *Epison v. Young*, 8 T. 136; *Hoescer v. Kraeka*, 29 T. 454; *Hickman v. Hickman*, 27 S. W. 31; *Fowler v. Stoneum*, 11 T. 478; *McClenny v. Admr.*, 10 T. 160; *Lewis v. Castleman*, 27 T. 419; *Ford v. Rosenthal*, 74 T. 28 (11 S. W. 904); *Lott v. Kaiser*, 61 T. 665; *Harralson v. Langford*, 66 T. 111.

§ 52. *Campbell v. McCampbell*, 34 S. W. (C. A.) 970.

McCampbell owned a lot on which he desired to build a home for himself and family. He made application to his brother for a loan to build the house, and gave him a lien thereon. In a suit to foreclose the lien, it was held that the property was a homestead, and the lien could not be enforced.

(The record does not show that any improvements had been made on the lot, or any act done towards making it a home, prior to the execution of the lien.)

Contra: *West End Town Co. v. Grigg*, 93 T. 451 (56 S. W. 49).

Where a party owning a vacant and unimproved lot which he wants to make his homestead, makes a contract for building a house thereon and gives a mechanic's lien for such purpose, the lien is valid because, prior to the execution of the lien, the party *merely has the intention* of making the property his homestead, and has taken no steps to that end until he makes the contract. It is the making of the contract that fixes the homestead right, and to hold such a lien invalid would be making the negotiation self-destructive.

NOTE.—*In the case of Campbell v. McCampbell, supra*, there was no statement of facts, and the court found that the property was a homestead. It may be that the evidence showed preparations toward establishing a homestead. The case is inserted here on the theory that the trial court probably found that the party's intention to make a homestead on the lot prevented the execution of a mechanic's lien thereon. Many of

the profession and some of the courts put this construction upon the case of Cameron v. Gebhard, 85 T. 610 (22 S. W. 1033). See *West End Town Co. v. Grigg*, 54 S. W. (C. A.) 904; *Sproule v. McFarland*, 56 S. W. 693.

See also the following cases where the preparatory acts have been held sufficient to establish the homestead right prior to the making of a contract for building a house. *Bell v. Greathouse*, 20 C. A. 478 (49 S. W. 258), (building a fence, shade trees and a sidewalk). *Furtner v. Edgewood Distilling Co.*, 16 C. A. 359 (41 S. W. 184) (building a fence, and clearing a lot).

Gallagher v. Keller, 4 C. A. 454 (23 S. W. 296) (planting shade trees and building fence). See same case, 87 T. 472 (39 S. W. 647); *King v. Wright*, 38 S. W. (C. A.) 530 (grading streets around lot and buying window and door frames for house to be erected).

§ 53. *Campbell v. Wilson*, 6 T. 379.

The principle of international law seems to be that without a proceeding *in rem*, or personal notice to the defendant by process served within the territory, jurisdiction can not be rightfully exercised, but as every state has the right to prescribe the manner in which its courts shall acquire and exercise jurisdiction, and as our statutes provide that service in certain cases may be made by publication, their jurisdiction can not be questioned and a valid judgment can be rendered which would bind the property of the defendant.

Contra: *Scott v. Streepy*, 73 Texas, 547 (11 S. W. 532).

See *McMullen v. Guest*, § 319.

§ 54. *Carlton v. Cameron*, 54 T. 72.

An instrument which reserves to the grantor a life estate is testamentary in its character, and inoperative as a deed where the maker's intention appears to be that it shall take effect only after his death.

Contra: *Martain v. Faires*, 22 C. A. 539 (55 S. W. 601). (Writ of error refused.)

An instrument executed and delivered by a father and mother to their son, conveying him certain property, but stipulating that the conveyance is not to take effect until after the death of both the grantors, is a deed taking effect on delivery, and not a will.

NOTE.—See *Matthews v. Moses*, 21 C. A. 494 (52 S. W. 113); *Millican v. Millican*, 24 T. 426; *Leslie v. McKinney*, 38 S. W. 378.

§ 55. *Carpenter v. Minter*, 72 T. 370 (12 S. W. 180).

Carpenter as principal and Minter as surety, executed a note for \$306, with ten per cent attorneys' fees should suit be brought thereon. Carpenter paid the note and brought suit against Minter for amount of the note and attorneys' fees: *Held*, the plaintiff had the right to sue upon the note itself, he having paid the note was subrogated to all the rights of the payee, and to recover the same amount which the payee could have recovered by suit. The plaintiff's right of action was not on the implied assumpsit, but upon the note itself.

Overruled by: *Faires v. Cockrill*, 88 T. 428 (35 S. W. 191).

Cockrill, Faires and others executed a written obligation to the S. A. & A. P. Ry. Co. by which they agreed to secure it right of way and depot grounds, and pay for the same, to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract and sued Faires and the other signers for their share of the amount paid: *Held*, that the railway company could have maintained an action thereon, but Cockrill could not do so, for his cause of action was upon the implied promise of Faires and others to indemnify him for whatever he should pay in their behalf, and his action was barred by the statute of limitation of two years.

NOTE.—See note, *Sublett v. McKinney*, § 453.

§ 56. *Carter v. Wise*, 39 T. 274.

A quitclaim deed only passes the present interest of the grantor and those who hold by such a deed are not, and can not be, innocent purchasers.

Limited: *Richardson v. Levi*, 67 T. 359 (3 S. W. 444).

The doctrine that a grantee under a quitclaim deed is not to be treated as an innocent purchaser, applies only to quitclaim deeds in the strict sense of that species of conveyance; or in other words, such deeds as purport to convey and quitclaim to the purchaser no more than the right, title or interest of the grantor.

NOTE.—See *Harrison v. Boring*, 44 T. 255, where held

that when the deed on its face contains evidence that the absolute right to the land and not the title or chance of title is sought to be sold, or if this appears from the inadequacy of the price, or other circumstances the purchaser may be a bona fide purchaser, though the deed may have in some other respects the qualities of a quitclaim deed.

See also Lindsay v. Freeman, 83 T. 264 (18 S. W. 727); *Threadgill v. Bickerstaff*, 87 T. 522 (29 S. W. 757); *Raynor Cattle Co. v. Bedford*, 91 T. 646 (44 S. W. 410); *Tate v. Kramer*, 23 S. W. 257; *King's Conflicting Cases*, Vol. 1, sec. 185.

§ 57. Cartwright v. Pipes, 9 C. A. 309 (29 S. W. 690).

A person in possession of land asserting an adverse claim thereto, having exclusive occupancy of it continuously for ten consecutive years, or more, hostile to the true owner, can recover the land even if he is in possession thereof and hold the same under the mistaken belief that it is vacant public land.

Contra: Schleicher v. Gatlin, 85 T. 270 (20 S. W. 120).

See Converse v. Ringer, § 87.

§ 58. Casey v. Chaytor, 5 C. A. 385 (23 S. W. 1114).

Where goods are wrongfully seized and sold, the owner is entitled to recover the value of the goods at the date of the sale with interest, even though he purchased them at such sale for a less sum.

Overruled: Field v. Munster, 32 S. W. (C. A.) 417; *Id.* 89 T. 102 (33 S. W. 852).

The true measure of damages, where the owner has purchased the property at the sale, is interest on the value of the property from the seizure to date of sale, the amount paid by owner at the sale, with interest and any depreciation in value while withheld from the owner.

NOTE.—See Schooler v. Hutchins, § 414.

§ 59. Chambers v. Shaw, 23 T. 165.

A former suit brought by the plaintiff, for the same land, against the defendants, but dismissed for the want of prosecution, does not interrupt the running of the statute of limitations.

Overruled: Miller v. Earle, 4 W. & W., sec. 222.

§ 60. *Cheveral v. Bowman*, 2 W. & W., sec. 115.

A charge, of itself erroneous, will not, in a civil case, be sufficient ground for reversal when no exception is taken, or additional instruction or countercharge asked, unless it clearly appears that the jury were misled by the charge given and complained of.

Contra: *Wallis-Landers Co. v. Eichelbergel*, 2 W. & W., sec. 135.

Charges given by the court are to be regarded as excepted to without the necessity of taking any bill of exceptions thereto.

NOTE.—*The case of Cheveral v. Bowman*, was decided after the enactment of article 1318, *Revised Statutes*, which provides as follows: "Such charge shall be filed with the clerk and shall constitute a part of the record of the cause and shall be regarded as excepted to and subject to revision for errors therein without the necessity of taking any bill of exceptions thereto." The case mentioned undoubtedly states the law and the correct practice as it existed prior to the adoption of the article named in the *Revised Statutes* and is supported by the following cases, all decided, however, previous to the enactment of that statute: *Mills v. Ashe*, 16 T. 304; *Cook v. Wooters*, 42 T. 294; *Railway v. Morse*, 1 W. & W., sec. 413; *Hab v. Johnson*, 1 W. & W., sec. 626; *Wisson v. Baird*, 1 W. & W., sec. 710.

The following cases are in accord with the contra case: *Railway v. Rabb*, 3 W. & W., sec. 39; *Railway v. Kuehn*, 31 S. W. 322; *Alexander v. Robinson*, 86 T. 511 (26 S. W. 41).

§ 61. *City of Austin v. Nalle*, 85 T. 534 (22 S. W. 876, 963).

In this case, suit was brought to enjoin the collection of certain taxes for the years 1891 and 1892, which had been assessed for the purpose of paying the interest and sinking fund upon certain bonds, which it was claimed had been issued by the city for an illegal purpose. It was also sought to cancel the bonds so issued, and to restrain the issue of other bonds for the same purpose. *Held*, that Justice Key, who was a taxpayer in Austin, was disqualified to sit in the case in the court of civil appeals.

Limited: *City of Dallas v. Peacock*, 89 T. 58 (33 S. W. 220).

Peacock recovered judgment for \$3,000, in a suit for personal injuries, against the city of Dallas. On appeal it was held that the judges of the court of civil appeals were not disqualified to sit in the case by reason of being taxpayers in the city.

Justice Gaines says of the Nalle case: "We merely intended in that case to hold that in a suit to cancel a bonded indebtedness for which a special tax had been provided and levied, and to enjoin the special tax to pay them as well as the issue of new bonds under the same provision, a holder of taxable property in the city was not competent to sit as a judge. The facts warranted our going no further, nor was it our purpose to do so."

§ 62. *City of Brenham v. Water Works Co.*, 67 T. 561
(4 S. W. 143).

In this case it was held (1) that the city had no power to make the contract entered into between it and the waterworks company; (2) that the contract created a monopoly and was, therefore, unlawful. In remanding the case, however, the supreme court held that the waterworks company would be entitled to recover on the contract for the period between June 1 and July 10, 1885—the time during which the city recognized the contract as binding—but could not recover for water furnished after the date the city repudiated the contract.

Contra: *Edwards Co. v. Jennings*, 89 T. 621 (35 S. W. 1053).

"If the contract was *unlawful* as creating a monopoly, which we understand to be the second proposition decided thereon (*Brenham v. Waterworks Co.*), then under the well-established principles of law governing us in the decision of the case before us, no recovery should have been allowed the water company for water furnished before July 10, 1885."

§ 63. *City of Corsicana v. Tobin*, 57 S. W. (C. A.) 319.

Where the plaintiff proved his injuries in opening his case and the defendant offered no testimony on the subject it was not error to allow the plaintiff to offer further testimony in reference thereto.

Contra: *Ayres v. Harris*, 77 T. 120 (13 S. W. 769).

See *Karner v. Stamp*, § 262.

§ 64. *City of Ft. Worth v. Crawford*, 74 T. 408
(12 S. W. 52).

When a city permits a nuisance to remain it is liable for all injuries that result from a failure on its part to properly exercise the power possessed by it.

Questioned: *City of San Antonio v. Mackey*, 14 C. A. 210 (36 S. W. 762).

"It seems to us," says the court of civil appeals, "that a city is not liable in damages for the mere failure to exercise a corporate power."

NOTE.—*The question referred to was not involved in either of these cases, as in both the city had created the nuisance, and not merely permitted it to remain.*

§ 65. *City of Galveston v. Barbour*, 62 T. 174.

In a suit by a parent for damages for injuries to a child, the plaintiff is entitled to recover a sum equal to the pecuniary benefit the parent had a reasonable expectation of receiving from the child had he not died.

Overruled: *F. W. & D. C. Railway v. Morrison*, 93 T. 527 (56 S. W. 745).

The true measure in such cases is the present value of such pecuniary benefit—such a sum as paid now will be a fair compensation.

NOTE.—*See note to G. H. & S. A. Ry. v. Hughes*, § 154.

§ 66. *City of Henrietta v. Eustis*, 87 T. 14 (26 S. W. 619).

Under Revised Statutes, article 518 (447), where land has been purchased by the city, the owner can not question the title acquired under the deed without showing the payment of all taxes.

Limited: *Eustis v. City of Henrietta*, 90 T. 468 (39 S. W. 567).

In so far as article 518 (447), Revised Statutes, makes the payment of taxes by the owner to the city, or to one who has purchased at a void sale or claims the property under a void deed, a condition precedent to his resisting the claim made upon his property under such void proceeding, it is violative of the constitution of the state as well as of section one of the fourteenth amendment of the constitution of the United States.

The constitutionality of this statute was not before the court nor passed on by them on the former appeal.

NOTE.—*Ozee v. City of Henrietta*, 90 T. 334 (38 S. W. 768); *Eustis v. City of Henrietta*, 91 T. 330 (43 S. W. 259).

§ 67. *City of Laredo v. Nalle*, 65 T. 359.

In the absence of any statute providing that municipal corporations shall be exempt from garnishment, a city, like an individual or private corporation, is subject to the process of garnishment for an ordinary debt it may owe to a third person.

Questioned: *City of Sherman v. Shobe*, 58 S. W. (Sup.) 949.

In this case it was held that a county was not subject to garnishment and Chief Justice Gaines makes the following reference to *City v. Nalle*, viz: "While the correctness of the ruling may be doubted, it is not necessary for us, in this case, to disturb it."

§ 68. *City of McGregor v. Cook*, 4 W. & W., sec. 141.

As a general rule, execution can not be awarded to enforce a judgment against a municipal corporation, and this general rule must obtain in the absence of any statute providing otherwise.

Contra: *City of Laredo v. Nalle*, 65 T. 359.

We have no statute forbidding the issuance of an execution against a city, and this process is denied by none of our decisions. We have a statute providing that execution shall not issue against a *county* (Revised Statutes, article 679). By making this special provision in reference to one class of municipal corporations, the legislature indicated that the other class should not be exempt from execution.

NOTE.—*City of Sherman v. Williams*, 84 T. 423.

It does not appear, in any of the decisions above mentioned, whether the cities were incorporated under the general law or by special act of the legislature. In special acts incorporating cities, there is usually a provision in reference to the mode and manner of collecting judgments against the city. The cases in conflict evidently have reference to cities whose charters are silent as to the mode and manner of collecting judgments against them.

§ 69. *City of Quanah v. White*, 88 T. 14 (28 S. W. 1065).

By the dissolution of the old corporation (the city), its property passed into the control of the commissioners' court of that county, and the court was thereby invested with the power to pay the debts of the dissolved corporation.

Limited: *Sun Vapor Electric Light Co. v. Keenan*, 88 T. 197 (30 S. W. 868).

The statute (article 541, as amended by acts 1891, p. 95) requiring the commissioners' court to levy a tax to pay the debts of city incorporations, which have been declared invalid, is unconstitutional.

"The expression in *City of Quanah v. White* is merely an announcement of the declaration made by the statute. It was not intended to declare the statute valid. The question of the constitutionality of the statute was not involved in that case and its decision was waived."

§ 70. *City of Waco v. Chamberlain*, 92 T. 207
(47 S. W. 527).

Abutting property-owners are liable to the city for the costs of street improvements, under a charter making them liable for two-thirds of the cost.

Contra: *Hutcheson v. Storrie*, 92 T. 685 (51 S. W. 848).

Laws authorizing cities to assess abutting property-owners for street improvements, without reference to the benefits derived by such owners, are unconstitutional.

NOTE.—See full discussion in *Adams v. Fisher*, § 1. The constitutionality of the law does not seem to have been urged in *City of Waco v. Chamberlain*.

§ 71. *City of Yaleta v. Babbitt*, 8 C. A. 432 (28 S. W. 702).

An assignment of error relating to the charge of the court will not be considered where the same was not presented in the motion for a new trial.

Overruled: *W. U. Tel. Co. v. Mitchell*, 89 T. 442 (35 S. W. 4).

When the court overrules or sustains exceptions to the pleading, admits or rejects evidence over objection properly presented and preserved, or gives, refuses, or qualifies instructions, it becomes a matter of record; it is the action of the court

itself and subject to reversion without having been presented in the motion for a new trial.

NOTE.—See *A. T. & S. F. Ry. Co. v. Worley*, § 8; *Ins. Co. v. Wicks*, 54 S. W. 294.

In a recent case, Lion Ins. Co. v. Wicks, 54 S. W. (C. A.) 294, it is held, however, that the overruling of a motion for a continuance must be made a ground of objection in the motion for a new trial in order to be relied on in the appellate court. This decision is based on Rule 70, Rules District Courts, which provides that the rulings of the court "on motions for a continuance, for the change of venue and other preliminary motions made and filed in the progress of the cause" must be presented by bills of exception and made a ground of objection in motions for a new trial.

§ 72. *Claiborne v. Birge*, 42 T. 98.

A binding agreement for extending the time, however short, for payment of the debts, will discharge the surety. On the other hand, mere delay in its collection, a promise to give time not based on an adequate consideration, or a promise to forbear its collection indefinite as to time, or an assent to an application for extension of time on the expectation of additional interest, will not release the surety.

Overruled as dicta: *Benson v. Phipps*, 87 T. 578 (29 S. W. 1061).

The right of the surety, after the maturity of the debt, to pay it and proceed against the principal for indemnity, is impaired if the creditor contract with the principal for an extension of the time of payment. In case of a debt which bears interest, when an extension for a definite period is agreed upon by the parties thereto, the contract is that the creditor will forbear suit during the time of the extension, and the debtor foregoes his right to pay the debt before the end of that time. The latter secures the benefit of the forbearance and the former an interest-bearing investment for a definite period. Such a contract is upon a valuable consideration, and is binding upon the parties.

NOTE.—*Mann v. Brown*, 71 T. 245 (9 S. W. 171); *Payne v. Powell*, 14 T. 601; *Hoerr v. Coffin*, 1 W. & W., sec. 185; *Burke v. Krueger*, 8 T. 69; *Wybrants v. Lutch*, 24 T. 310; *Pilgrims v. Dykes*, 24 T. 383; *Wylie v. Hightower*, 74

T. 307 (11 S. W. 1118); *Babcock v. Bank*, 1 W. & W., sec. 1118; *City of Brenham v. Becker*, 1 W. & W., sec. 1243; *Morris v. Booth*, 4 W. & W., sec. 286; *Brown v. Fountain*, 3 C. A. 227 (22 S. W. 129); *Hunter v. Clark*, 28 T. 162; *Yeary v. Smith*, 45 T. 72; *Andrews v. Hagadon*, 54 T. 578; *Beasley v. Boothe*, 3 C. A. 98 (22 S. W. 255); *Knapp v. Mills*, 20 T. 123; *Maddox v. Lewis*, 12 C. A. 424 (34 S. W. 647).

§ 73. *Clark v. Goins*, 23 S. W. (C. A.) 703.

Where a married woman, who owned her home place in her separate right, had been deserted and had taken a dependent granddaughter to live with her, the granddaughter was entitled, at her death, to continue to use the property as a homestead, she being the only surviving constituent member of the family, and it was not subject to administration. And inasmuch as there was a surviving constituent of the family at the death of the grandmother, the legal title to the homestead vested in the granddaughter's mother (an only child who had not lived on the place), free from the grandmother's debts.

Contra: *Roots v. Robertson*, 93 T. 365 (55 S. W. 308).

There is no provision of the law that authorizes a court to set apart exempt property of an estate to the surviving constituents of *every* family to which it may be exempted. The constituents of a family who are entitled to the homestead on the death of the head are named in the law and the constitution. The constitution names only the widow and minor children, and in this case it was held that a mother who lived with her son was not entitled, after his death, to hold the property as against his creditors, because she did not inherit the exemption which was accorded to him, and did not come within the terms of section 52, article 16, constitution 1876, or Revised Statutes, article 2046.

NOTE.—Admitting that the grandmother and granddaughter constituted a family within the meaning of the law, clearly the granddaughter, under the decision of *Roots v. Robertson*, was not entitled to the homestead at the grandmother's death, and it became subject to her debts. The distinction should be drawn between cases in which the exemption is claimed as a "family" under section 50, article 16, constitution, and where it is claimed as a surviving constituent of a family, under section 52, article 16, constitution, or article 2046, Re-

vised Statutes. In the former case, quite a number of different combinations of people may come within the meaning of the term "family," but in the latter, it is only the surviving spouse, or minor children, who are entitled to the exemption under the constitution, and to these the statute (article 2046) adds, "unmarried daughters remaining with the family."

See *Childers v. Henderson*, 76 T. 664 (13 S. W. 481); *Zuerneman v. Von Rosenberg*, 76 T. 552 (13 S. W. 379).

§ 74. *Clay v. Clay*, 7 T. 250.

Where, in a case of forcible entry and detainer before a justice of the peace, the jury returned a verdict for the plaintiff, opposite to which on his docket the justice made an entry of "judgment rendered 17 April, 1849," it was held a sufficient entry of the judgment.

Contra: *Giersa v. Yocum*, 1 W. & W., sec. 310.

A judgment of a justice of the peace which merely stated that the case being called for trial both parties appeared and that the court, after hearing the evidence, gave judgment against the plaintiff for all costs of suit, for which let execution issue, is not a final judgment.

Under Revised Statutes 1613, the judgment must be spread on the minutes and signed, and in order for the judgment to have been a final judgment, it should have clearly stated that the plaintiff take nothing by his suit and that the defendant recover his costs.

§ 75. *Clay v. Clay*, 26 T. 25.

Under the laws of Mexico an alien was incapable of acquiring real estate.

Overruled: *Baker v. Westcott*, 73 T. 129 (11 S. W. 157).

See *Holliman v. Peebles*, § 227.

§ 76. *Clopton v. Herring*, 26 S. W. (C. A.) 1104.

A judgment rendered simply for defendant, where he has pleaded a counterclaim, it not a final judgment because it does not dispose of defendant's cross-demand.

Contra: *Bemis v. Donnigan*, 18 C. A. 125 (43 S. W. 1052).

See *G. C. & S. F. Ry. Co. v. Stephenson*, § 185.

§ 77. *Close v. Fields*, 13 T. 623.

When one collects money for another and refuses to pay it over, interest is not recoverable *eo nomine*, but as damages, and, therefore, the charge of the court should have left the question of interest under the name of damage, to the discretion of the jury.

Contra: *Watkins v. Junker*, 90 T. 584 (40 S. W. 11).

If interest be properly an element of damages in any case, then it is so as a matter of law, and the question should not be left to the jury.

NOTE.—See *Fowler v. Davenport*, § 138 and note.

In the case of Close v. Fields, the court refused to reverse the cause because the trial judge directed the jury to allow interest, on the ground that under the facts of the case the verdict of the jury could not consistently have been different.

§ 78. *Cockrill v. Cox*, 65 T. 669.

A witness may state his opinion of the deceased's capacity to make a will, after he has testified to the facts upon which his opinion is predicated.

Overruled: *Brown v. Mitchell*, 88 T. 350 (31 S. W. 621).

See *Garrison v. Blanton*, § 159.

§ 79. *Coffin v. Douglas*, 61 T. 406.

In this case the general assignment was held valid because its language was construed to pass the partnership property and all of the individual property of each of the parties. The court, however, considered the case from the standpoint that an instrument, which did not purport to pass the partnership property as well as the individual property owned by the partners, could not be sustained as a valid assignment.

Contra: *Wetzel v. Simon & Co.*, 87 T. 414 (28 S. W. 274, 942).

Whenever a debtor, either insolvent or contemplating insolvency, shall make an assignment of any part of his property for the benefit of any of his creditors, it shall operate as a conveyance of all of his property to the assignee for the payment of all his debts, and that it shall be treated in all respects as a general assignment made in strict accord with the terms of the act.

NOTE.—According to *Wetzel v. Simon*, it seems that a general assignment of partnership property, signed by each of the parties, would pass all the individual property of each partner, whether so expressed in the instrument or not. *McCart v. Maddox*, 68 T. 456 (5 S. W. 150); *City Nat. Bank v. Merchants Nat. Bank*, 87 T. 295 (28 S. W. 277); *Id.* 7 C. A. 584 (27 S. W. 848).

See cases cited in *Wetzel v. Simon*, 87 T. 415 and distinguished.

§ 80. *Coles v. Elliott*, 23 T. 606.

Abandoned pleadings that have been superseded by amendment are not admissible as evidence against the party. *Contra*: *Barrett v. Featherstone*, 89 T. 567 (36 S. W. 245).

Abandoned pleadings are admissible in evidence.

See §§ 434, 471, 481.

§ 81. *Colorado Co. v. Beethe*, 44 T. 450.

"To the county courts is committed the duty and responsibility of providing for the financial welfare of the several counties. The county courts could not be justly held to a strict accountability as they should be, if the funds they are required to provide in order to carry on the affairs of the county, can be used, paid out, or in any manner disposed of, without the knowledge or consent of these courts."

Limited: *Bland v. Orr*, 90 T. 492; 39 S. W. 558.

There is no power conferred upon the county commissioners' court to compromise the debt of a defaulting county treasurer, by accepting a deed of land from a surety on his bond: such courts have no authority over obligations due the county.

NOTE.—In accord with *Bland v. Orr*, *Nolan Co. v. Simpson*, 74 T. 218 (11 S. W. 1098).

In accord with *Colorado Co. v. Beethe*—*Looscan v. Harris County*, 58 T. 511.

In consequence of the decision of *Bland v. Orr*, *Revised Statutes*, article 1537 has been amended (Acts 1897, p. 210).

See *Looscan v. Harris*, § 298, and note.

§ 82. *Commercial Insurance Co. v. Meyer*, 9 C. A. 7 (29 S. W. 93).

A total loss does not mean an absolute extinction. If the

building has lost its identity and specific character as a building, then the property is totally destroyed, within the meaning of the policy.

Contra Insurance Co. v. McIntyre, 90 T. 170 (37 S. W. 1068).

See *Hamburg-Bremen Ins. Co. v. Carlington*, § 192.

§ 83. *Compton v. Ashley*, 4 C. A. 406 (23 S. W. 487).

Revised Statutes, article 1389, enacted before the creation of the court of civil appeals, provided that a writ of error might be sued out at any time within two years after final judgment. Act 1892, taking effect September 1 (Gen. Laws 1892, c. 15), provided that a writ of error to the court of civil appeals might be sued out at any time within twelve months after final judgment. *Held*, this latter act should be so construed as to allow a writ of error to such court, from a judgment rendered before the date of the taking effect of the act, to be sued out at any time within twelve months of such date, provided that it be done within two years from the rendition of the judgment.

Contra: *Odum v. Garner*, 86 T. 376 (25 S. W. 18).

Act April 13, 1892, amending Revised Statutes, article 1389, so as to make the time within which a writ of error from a judgment may be sued out, one year after judgment instead of two years, applies to judgments rendered before the law went into effect. On the substitution of a new term of limitation for suing out a writ of error, the time which elapsed under the former law will be counted in the ratio that it bears to the whole period, and the time of the new law will be computed on the basis of the ratio that the unexpired term under the old bears to the whole term.

NOTE.—*Grace v. Buffington*, 25 S. W. 317.

§ 84. *Compton v. Perry*, 23 T. 414.

Where a creditor brings suit for personal property purchased at execution sale, against a vendee, alleging that the sale was made in fraud of creditors, the statute of limitation did not commence to run against the plaintiff until his judgment was recovered and he was thereby in a situation to force his demands against the property.

Contra: *Vodrie v. Tynan*, 57 S. W. 680.

The statute of limitation barring a creditor's suit to set aside an insolvent debtor's fraudulent conveyance, will be held to run from the date of the creditor's knowledge of the fraud, notwithstanding his judgment was not recovered till afterwards.

§ 85. *Conklin v. City of El Paso*, 44 S. W. (C. A.) 880.

[Writ of error refused, 91 T. 537 (44 S. W. 988)].

The city of El Paso held an election in 1882, to determine whether it should assume control of its public schools by council or trustees, and the result of the vote was in favor of control by trustees, by more than two-thirds of the vote. The election was not ordered or held in accordance with the provisions of the statute, but the city proceeded to elect a school board, and in 1883, the taxpayers voted a tax for schools. *Held*, that the tax was void and the taxpayer could defeat it in a suit by the city against him for taxes.

Overruled: *City of El Paso v. Ruckman*, 92 T. 86 (46 S. W. 25).

Although the elections held for the purpose of determining whether the city should become an independent school district were irregular, yet the city thereby became *de facto*, and in effect, a separate school district, and it had the power, by a vote of its taxpayers, to authorize a levy of a tax to support its schools, and the tax can not be successfully questioned by the taxpayer in a suit by the city against him.

§ 86. *Connor v. Mackey*, 20 T. 750.

Where the consideration for the execution of the note sued on, was money won at cards, the same is illegal and void.

Contra: *Thompson v. Samuels*, 14 S. W. 143.

See *Donnelly v. Citizen's Bank*, § 109.

§ 87. *Converse v. Ringer*, 6 C. A. 58 (24 S. W. 705).

Under the statute giving title to one who has adverse possession of land for ten years, his possession is adverse to that of the true owner, though his possession is under the mistaken belief that it is vacant land, and with the intention to acquire title from the state under the homestead or pre-emption laws.

Contra: *Schleicher v. Gatlin*, 85 T. 270.

Occupying land under the belief that it is vacant, with

the intent to obtain title from the state, is not adverse possession under the statute of limitation of ten years, for in order to make his possession adverse, it must be against the claim of all other persons.

NOTE.—The following cases are in accord with *Converse v. Ringer*; *Cartwright v. Pipes*, 9 C. A. 309 (29 S. W. 690); *Longley v. Warren*, 11 C. A. 269 (33 S. W. 304).

The following cases are in accord with *Schleicher v. Gatlin*; *Mhoon v. Cain*, 77 T. 317 (14 S. W. 24); *Beaumont Lumber Co. v. Ballard*, 23 S. W. 920; *Norton v. Collins*, 1 C. A. 272 (20 S. W. 1113); *Blum v. Rogers*, 11 C. A. 184 (32 S. W. 713); *Hearne v. Gillette*, 62 T. 27; *Hartman v. Huntington*, 11 C. A. 130 (32 S. W. 562).

§ 88. *Cook v. Crawford*, 1 T. 9.

The court can not judicially know the rate of interest of another country until ascertained as any other fact. A judgment, therefore, for interest on a note made in another state is erroneous unless the interest of state is proven.

Contra: *Moseby v. Burrows*, 52 T. 396.

See *Huff v. Folger*, § 241.

§ 89. *Corley v. Roundtree*, 37 S. W. 475.

Judgment may be rendered against the sureties on a replevin bond, even though the distress warrant has been quashed.

Contra: *Mitchell v. Bloom*, 91 T. 634 (45 S. W. 558).

See note, *Sexton v. Hindman*, § 418.

§ 90. *Cotton v. Jones*, 37 T. 35.

The date of the filing of the petition, or the reading of the same to the court, or the further fact that the petition is a matter of record in the cause will, in no event, authorize the court to take into consideration its file-mark on demurrer, unless the same has been specially presented as testimony, the same as any other written evidence.

Overruled by: *T. & N. O. R'y Co. v. Speightes*, T. C. R., vol. 1, p. 513 (60 S. W. 660).

The trial court takes notice of the true date of filing the suit on trial before it, as such date appears from the original petition, and may see from an inspection of it, whether or not

such date is correctly stated in an amendment, and the appellate court reviewing its action, may do the same thing, but to enable it to disregard a recital, such as that in question, designed by the rules to furnish the proper date, the other papers showing its incorrectness should be sent up with the record, otherwise the court must be guided by that which the rules have provided as the proper information upon such points.

NOTE.—*Rucker v. Daly*, 66 T. 286 (1 S. W. 816); *Moody v. Moller*, 72 T. 635 (10 S. W. 727); *Hutchins v. Flintge*, 2 T. 475.

§ 91. *Court v. O'Connor*, 65 T. 334.

Where a party's pasture lies partly in the county of his residence and partly in an adjoining county, he may render all his cattle in the county of his residence and pay taxes on them there.

Overruled: *Nolan v. San Antonio Ranch Co.*, 81 T. 315 (16 S. W. 1064).

After the decision in *Court v. O'Connor*, the legislature passed an act requiring parties to assess "in each county, such portion of said stock as the land in such county is of the whole pasture."

§ 92. *Cox v. Reinhardt*, 41 T. 591.

An affidavit for attachment must allege the amount of the debt due and what is not due, and where it is averred in the affidavit that the debt is all due and such allegation is not true, the writ should be quashed.

Overruled: *Gimbel v. Gomprecht*, 89 T. 497 (35 S. W. 470).

The statute does not require a party to state what portion of the debt is due, and what is not due, and the truth of the affidavit can not be controverted for the purpose of abating the writ.

NOTE.—See *Avery v. Zander*, § 9.

§ 93. *Cruger v. McCracken*, 30 S. W. 373.

Where, on appeal to the court of civil appeals, judgment is entered on a supersedeas bond on which a married woman is surety, the court of appeals has no jurisdiction to entertain a motion to set same aside on the ground that being a married woman she was not liable on the bond, where the fact that

Limited: Bullock v. Sprowls, 93 T. 188 (54 S. W. 661).

One disaffirming his deed on the ground that it was executed when he was a minor, must restore the consideration if it is still in his possession, or within his control, but where the consideration has been wasted during his minority, he is not required to pay, or offer to pay, the consideration as a condition of recovering the property by him conveyed.

NOTE.—The following cases are in accord with the limited case: *Kilgore v. Jordan*, 17 T. 341; *Stewart v. Baker*, 17 T. 417; *Bingham v. Barley*, 55 T. 281; *Graves v. Hickman*, 59 T. 38; *Harris v. Musgrove*, 59 T. 401; *Vogelsang v. Null*, 67 T. 465, 3 C. A. 451; *Wade v. Love*, 69 T. 522; *Ferguson v. H. E. & W. T. Ry. Co.*, 73 T. 344 (11 S. W. 347).

See the following authorities which discuss the right of the minor to disaffirm: *Dunnenbaum v. Schram*, 59 T. 281; *Bank v. Wales*, 3 W. & W., sec. 245; *Searcy v. Hunter*, 81 T. 646 (17 S. W. 372); *Hunt v. Turner*, 9 T. 389; *Giddings v. Syeele*, 28 T. 748; *Northcraft v. Oliver*, 74 T. 162 (11 S. W. 1121); *Folts v. Ferguson*, 77 T. 305 (13 S. W. 1037); *Askey v. Williams*, 74 T. 297 (11 S. W. 1101); *Veal v. Fortson*, 57 T. 487.

The principle in the case of *Bullock v. Sprowls* is so broadly stated, that the reader may be misled into believing that the court intended to hold that when a minor sells his property, even to a person ignorant of his minority, the minor on arriving at majority may recover the property conveyed without offering to restore the consideration received if he has wasted it during his minority.

The opinion, when read in light of the facts, should be construed to hold that the squandering of the consideration during minority will not relieve the minor from restoring the consideration to a purchaser who has dealt with the minor in ignorance of his disability.

§ 98. *Curlin v. Hendricks*, 35 T. 225.

The plaintiff, in trespass to try title, can not establish title by limitation without pleading it specially.

Contra: *Benavides v. Molino*, 60 S. W. 260.

In this case, where the petition was in the statutory form, it was held that title by limitation could be established without special pleading, and *Curlin v. Hendricks* was referred to as

announcing a contrary doctrine, but one not necessary for a proper disposition of that case.

NOTE.—The supreme court dismissed the application for a writ of error in *Benavides v. Molino* (See 60 S. W. 875), on the ground that there was no conflict between that case and *Curlin v. Hendricks*, because in the latter case, the plaintiff had especially pleaded his title while in *Benavides v. Molino* the petition was merely in the statutory form. It indicates, however, its disapproval of the rule announced by the court of civil appeals.

See *Note to Mayers v. Paxton*, § 328.

§ 99. *Curry v. Terrell*, 1 W. & W., sec. 240.

Article 316, Revised Statutes, allowing either party to plead new matter in the county or district court, which was not presented in the court below, has application to appeals as well as to certiorari.

Overruled: *Ostrom v. Tarver*, 29 S. W. 69.

Article 316, Revised Statutes, allowing either party to plead new matter in the county or district court, which was not presented in the court below, applies only where the cause is removed by certiorari, but has no application where the cause is removed by appeal.

NOTE.—*Mass v. Solinsky*, 67 T. 290; *Moore v. Jordan*, 67 T. 394; *Rush v. Lester*, 2 W. & W., sec. 442; *Machine Co. v. Slover*, 4 W. & W., sec. 236; *Harrison v. Ry. Co.*, 4 W. & W., sec. 69; *Curry v. Terrill*, 1 W. & W., sec. 239; *Ry. Co. v. Klepper*, 24 T. 567; *Swinborn v. Johnson*, 24 S. W. 567; *Gholson v. Ramey*, 30 S. W. 713; *Harrold v. Barwise*, 30 S. W. 498; *Bowden v. Gilbert*, 67 T. 689; *Blanton v. Langston*, 60 T. 149; *Railway Co. v. Denson*, 26 S. W. 265; *Railway Co. v. Jones*, 23 S. W. 424; *Nunn v. Edmiston*, 9 C. A. 362; *G. C. & S. F. Ry. Co. v. Crossman*, 30 S. W. 290; *Milam v. Filgo*, 3 C. A. 344; *Mahoney v. Cope*, 27 S. W. 157.

The overruling case of *Ostrom v. Tarver* was overruled by the supreme court in *White Dental Mfg. Co. v. Hartzburg*, § 362.

§ 100. *Dallas P. & S. E. R. Co. v. Day*, 3 C. A. 353
(22 S. W. 538).

A judgment of a trial court is *res adjudicata* notwithstanding the execution of a supersedeas bond, and the pendency of the cause in the appellate court thereon.

Contra: *Texas Trunk Ry. Co. v. Jackson*, 85 T. 605 (22 S. W. 1030).

See *Thompson v. Griffin*, § 482, and note.

§ 101. *Dallas & Wichita Ry. Co. v. Spicker*, 61 T. 427.

In an action for injuries alleged to have been caused by defendant's negligence, when the plaintiff's own case exposes him to a suspicion of negligence, the burden is on him to clear off such suspicion.

Overruled: *G. C. & S. F. Ry. Co. v. Shieder*, 88 T. 152 (30 S. W. 902).

In this case, the doctrine of suspicion of negligence on the part of plaintiff is referred to and disapproved, and the correct rule held to be that the burden is always on the defendant to show contributory negligence of plaintiff, unless his pleadings, or the proof show facts that would make him guilty of negligence *as a matter of law*, in which event, he must plead and prove some fact or circumstance refuting the presumption which the law raised against him. For example, if his petition showed that he was injured on defendant's track, under such circumstances as to make him a trespasser, then the law would raise the presumption of contributory negligence and it would be necessary for the plaintiff to allege some fact to meet this presumption—such as that he was, after going upon the track, stricken down by some providential cause.

§ 102. *Daniel v. Bridges*, 73 T. 149 (11 S. W. 121).

If from any cause a sufficient number of jurors, drawn by the commissioners, be not in attendance, or panels are reduced below a number adequate to the demands of the docket, the sheriff may be directed, after the proper oath is administered to him, to supply the deficiency, but the law invests no court with the power to order the sheriff to summon a venire for the trial of a civil cause.

Overruled: *Smith v. Bates*, 28 S. W. 64.

It is to be presumed that a judge will, whenever possible,

have the jury selected through commissioners, but if from any cause this is not done, then the statute invests him with the power to have a venire summoned through the sheriff.

NOTE.—*H. E. & W. T. Ry. Co. v. Vinson*, 38 S. W. 540; *Western Union Tel. Co. v. Everheart*, 10 C. A. 472; *Roundtree v. Gilroy*, 57 T. 178.

§ 103. *Daniels v. Larendon*, 49 T. 216.

Sureties on an injunction bond are parties to the suit and can not become sureties on the appeal bond.

Limited: *Sampson v. Solinsky*, 75 T. 663 (13 S. W. 67).

A surety for costs, in the event his principal is cast in the suit, may become surety on appeal from the judgment.

NOTE.—*Daniels v. Larendon* is referred to in *Sampson v. Solinsky* and questioned, but the ruling in the latter case is based on the ground that sureties on a cost bond do not become parties to the suit.

In *Carter v. Forbes Lith. Mfg. Co.*, 22 C. A. 373 (54 S. W. 926), however it is held that sureties on an appeal bond from the justice court to the county court may also become sureties on the appeal bond from the county court to the court of civil appeals. *Trammel v. Trammel*, 15 T. 291; *Labadie v. Bean*, 47 T. 90; *Saylor v. Marks*, 56 T. 90; *Long v. Krueger*, 4 C. A. 145 (23 S. W. 242).

§ 104. *Davis v. Terry*, 33 T. 426.

The assurance of the district judge, to a defendant in a civil suit, that no civil business would be transacted at that term, warranted the defendant in believing that no action would be taken in his cause, and excused his neglect of his defense at that term; and this, in connection with a prima facie showing of a good defense, entitled him at the next term to have a new trial of the cause, notwithstanding the judge's assurance judgment had been rendered against him by default at the first term.

Contra: *Overton v. Blum*, 50 T. 423.

Although the contrary might be inferred from some of the earlier decisions, it must now be regarded as settled that a new trial is never granted after the adjournment of the term of court at which the judgment is rendered, no matter what are the grounds urged in support of the application.

NOTE.—*Metzger v. Wendler*, 35 T. 385; *Vardeman v.*

The vendor can not be required by suit to convey the superior title to the transferee of the vendor's lien note which is barred by limitation.

NOTE.—The doctrine so often asserted that the vendor holds the superior title in trust from the holder of the note has had some peculiar applications. In *White v. Cole*, 87 T. 500 (29 S. W. 759; *Id.*, (C. A.) 1149), where the vendor conveyed the superior title to the holder of the note (Mrs. White), after it was barred by limitation, and she sued on the note and the maker pleaded limitation, it was held that she could recover the land. Under the rule in *Fidelity Co. v. Beckley*, the expression in all the cases that the vendor holds the superior title in trust for the holder of the note seems to be rendered meaningless or rather of no effect. It has never been questioned that the vendor retains the superior title and may sue and recover the title himself when the maker of the notes pleads limitation to the note, and a transfer of the note, without a conveyance, does not carry the superior title but only the lien which is barred with the note. This mysterious "superior title" seems to be an existing right that the vendor holds and one that he may enforce himself, or may voluntarily convey to another and although it has been asserted ever since our judicial system was organized that he holds this title in trust for the holder of the note it is now determined that such holder has no power to enforce this trust.

§ 109. *Donnelly v. Citizens Bank*, 3 W. & W., sec. 169.

Gambling contracts are illegal and void. They are not only void as between the original parties thereto, but a note or other security given upon consideration of money so won, stands in the same attitude in law as notes or other security given in consideration of money won at gaming and is void in the hands of an innocent holder for a valuable consideration. *Overruled:* *Thompson v. Samuels*, 14 S. W. 143.

A note given for a gambling debt, being only voidable, is good in the hands of an innocent holder for value before maturity.

NOTE.—The cases of *Stewart v. Miller*, 3 W. & W., sec. 292, and *Connor v. Mackey*, 20 T. 750, both hold that such contracts are void, although in neither of those cases were the rights of innocent parties involved. Nevertheless, if such con-

tracts are void, then an innocent purchaser will not be protected; therefore, those cases are to that extent overruled.

§ 110. Doty v. Caldwell, 38 S. W. (C. A.) 1025.

Where a check is drawn on a bank, there is an implied consent of the bank to such transaction, creating a privity of contract between the payee and the bank, and such payee may maintain an action thereon against the bank.

Contra: House v. Kountze et al., 17 C. A. 402 (43 S. W. 561). (Writ denied.)

An unaccepted check does not constitute an equitable assignment *pro tanto* of the fund against which it is drawn, and therefore will not support an action by the holder against the drawee.

NOTE.—The supreme court refused a writ of error in *House v. Kountze*, and doubtless on the theory that the result reached in the case was correct without intending to approve all the reasoning of that opinion. It seems to be now well settled by the decisions of the supreme court "that an assignment of a part of a chose in action is good in equity, and that it may be made either by direct transfer, or by an order drawn upon the particular fund," and that "the assignee acquires a right of action in equity against the debtor, and not only a lien upon the fund but a property in the fund itself."

Harris County v. Campbell, 68 T. 27, and 28 (3 S. W. 243); *Clark v. Gillespie*, 70 T. 516 (8 S. W. 121); *Johnson v. Amarillo Improvement Co.*, 88 T. 510 (31 S. W. 503). The decision in *House v. Kountze* is placed on the ground that there is no privity of contract between the check holder and the drawee until the check has been accepted, and, therefore, he can not sue. If it is intended to apply this rule, notwithstanding the particular fund drawn upon should be specified, then the case would seem to be in conflict with the decisions above referred to. But looking to the facts of the case the draft on Kountze in favor of House was simply an ordinary draft for \$5,000, designating no particular fund. This places the case on its facts clearly within the rule announced in *Harris County v. Campbell*, for there it is said: "An order expressly for part of a particular debt is a transfer of such portion, because it shows a manifest intention to assign to the payee the sum so ordered (1 Daniel Neg. Inst., sec. 23). But

is entered into at the same time, the interest provided for in the written contract is not thereby forfeited, because, while the constitution provides that *all* contracts for a greater rate of interest than ten per cent are unlawful, yet the legislature has fixed the penalties only as to *written* contracts. The court says: "But we have held in the Quinlan case, the constitutional prohibition of itself would render illegal only the excess of interest over ten per cent unless the legislature saw fit to provide otherwise. The legislature has declared usurious contracts void for the whole interest, but this is in respect only to written contracts, stipulating in some form for excessive interest which the written contract here does not do."

NOTE.—See *Quinlan's Est. v. Smye*, 21 C. A. 156 (50 S. W. 1068), where the same court expressed disapproval of *Dunham v. Harrison*. In that case (*Quinlan case*), the original contract, which was written, was not usurious, but an extension was made in consideration of an oral promise to pay a usurious rate. It was held that the original contract was not usurious and the supreme court refused a writ of error. There is another ground on which this decision can be placed, because, as said by the court, "the written contract was made prior to the verbal agreement, and its validity could not be affected by the subsequent oral agreement."

§ 114. *Eason v. Eason*, 61 T. 227.

When improvements made on land, by one who has entered on the faith of a verbal grant or gift of the land, are insignificant in value, or when the value of the use and occupation of the land by him who has thus entered has been of more value than the improvements made by him, no specific performance can be decreed.

Contra: *LaMaster v. Dickson*, 17 C. A. 473 (43 S. W. 911). (Writ denied.)

See *Ann Berta Lodge v. Levertton*, § 6, and note.

§ 115. *East Dallas v. State*, 73 T. 370 (11 S. W. 1030).

A proceeding by quo warranto, can not be entertained by the district court, unless the value involved exceed five hundred dollars.

Contra: *Dean v. State*, 88 T. 290 (30 S. W. 1047; 31 S. W. 185).

See *Bell v. Faulkner*, § 21.

§ 116. *East L. & R. River Ry. Co. v. Rushing*, 69 T. 3c6.

In a suit for personal injuries received by a passenger, it is held that if the defendant company was guilty of negligence which contributed to the injuries complained of, and if the plaintiff might, in the exercise of ordinary care and caution, have seen the danger and avoided it, and his omission to do so directly contribute to the injuries, then he was guilty of contributory negligence, which would prevent a recovery unless his injuries were caused by the wantonly reckless acts of the defendant, or unless the plaintiff was only guilty of slight negligence, and the defendant company was guilty of gross negligence.

Questioned: *McDonald v. I. & G. N. Ry. Co.*, 86 T. 1 (22 S. W. 939).

The doctrine that any degree of negligence which may be gross on the part of a defendant, will enable a plaintiff to recover, notwithstanding his own negligence, is unsound in principle. The damages allowed by law for a wrong negligently inflicted, are given as a compensation, and not as a punishment for the injury. To allow the plaintiff to recover for an injury which his negligent conduct has contributed to produce, would be to compensate him for his own negligent misconduct.

NOTE.—*Railway Co. v. Garcia*, 75 T. 591 (13 S. W. 223); *Bennet v. Railway Co.*, 11 C. A. 423 (32 S. W. 834); *Martin v. Railway Co.*, 87 T. 122 (26 S. W. 1052); *G. C. & S. F. Ry. Co. v. Buford*, 2 C. A. 116 (21 S. W. 272); *Railway Co. v. Peay*, 20 S. W. 57; *T. & N. O. Ry. Co. v. Brown*, 2 C. A. 281 (21 S. W. 424).

§ 117. *East Line & Red River R. R. Co. v. Scott*, 68 T. 694. (5 S. W. 501).

In this case, while the question was not before the court and was not definitely decided, it was intimated that where it is sought to charge the master by reason of his knowingly employing an incompetent servant, the servant's character must be shown by general reputation, and not by specific acts. The case of *Frazier v. Railway*, 38 Pa. St. 104, was referred to in support of this doctrine.

Contra: *Cunningham v. A. & N. W. Ry. Co.*, 88 T. 534 (31 S. W. 629).

Here, where one of the issues raised was as to the com-

fect by an entry *nunc pro tunc*, but nothing short of the disclosure of the notice of appeal upon the record would have saved the appeal from being dismissed in the appellate court for want of jurisdiction.

Contra: Western U. Tel. Co. v. O'Keefe, 87 T. 423 (28 S. W. 945).

The court of civil appeals of its own motion dismissed an appeal for want of notice, none appearing in the transcript. On motion to reinstate, appellant showed by affidavit and certified docket entry made by the trial judge, that the appellant had given notice of appeal in open court, and time was asked to perfect the record. The court refused the motion. *Held:* The statute provides that an appeal may be taken by giving notice in open court and by filing bond; and while it also makes it the duty of the clerk to enter it upon the minutes, the structure of the language employed indicates, as we think, that such entry was not to be a fact essential to the exercise of the jurisdiction of the appellate court. Laws 1892, art. 1387, p. 43. The jurisdiction, therefore, depends upon the fact of notice, and not upon the record of the fact.

NOTE.—*Wichita Ry. Co. v. Perry*, 87 T. 597 (30 S. W. 435).

§ 122. *Evans v. Taylor*, 60 T. 425.

It is the duty of the wife, who has qualified under the statute as community survivor, to pay the debts of the community to the extent of the common property; and if the estate is insolvent it would seem, in analogy to an ordinary administration, that she pay the pro rata. To pay out all the assets to one creditor or to one class of creditors, and send others away empty, would hardly comport with her duty to faithfully administer the estate.

Contra: Citizens Nat. Bank v. Jones, 22 C. A. 45 (54 S. W. 405).—Writ of error denied.

A surviving wife who has qualified as survivor under the statute, may make preferences among creditors of the same class and pay some of them in full to the exclusion of others.

NOTE.—*This decision is based on Leatherwood v. Arnold*, 66 T. 414 (1 S. W. 173), and a writ of error was denied by the supreme court. The rule established in the later cases seems an inequitable one, for although

the husband might have paid one creditor in preference to another, yet he would have still been personally liable to such other creditor, while the surviving wife sustains no personal liability to the creditors and their only resource is the trust estate—the community property—which in equity and on sound principle it would seem should be pro rated among creditors of the same class.

§ 123. *Evans v. Tucker*, 59 T. 249.

An affidavit for attachment must show what portion of the debt is due and what is to become due.

Overruled: Gimbel v. Gomprecht, 89 T. 427 (35 S. W. 470).

See *Avery v. Zander*, § 9, *supra*.

§ 124. *Fears v. Nacogdoches Co.*, 71 T. 337.

Under our statute there is no provision for the compensation of a physician summoned to aid in or conduct a post-mortem examination in an inquest.

Contra: Polk County v. Phillips, 92 T. 630 (51 S. W. 328).

Article 1024-a, authorizes a justice of the peace, if he deem it necessary, when impracticable to secure the county physician, to call in a regular physician to make the autopsy at the expense of the county.

§ 125. *Fenn v. G. C. & S. F. Ry. Co.*, 76 S. W. 380
(13 S. W. 273).

That an order granting a motion for a new trial must be absolute is well settled. If, therefore, the order in question in this case was conditional—that is to say, was to take effect and become final on the contingency of the defendant's paying the costs adjudged against it—it was a nullity, and the court should have granted the motion made at the next term to strike it from the docket.

Contra: Town v. Guerguin, 93 T. 608 (57 S. W. 565).

The court may grant a new trial on condition of the payment of all costs before adjournment of the term.

NOTE.—See Secrest v. Best, King's Conflicting Cases, Vol. 1, sec. 199.

In the case of Fenn v. G. C. & S. F. Ry. Co., the order granting a new trial was in fact absolute and, therefore, the language quoted was not necessary to the decision of the case,

nevertheless it announces a principle in direct conflict with that stated in Town v. Guerguin.

§ 126. *Ferguson v. Herring*, 49 T. 126.

Where a temporary injunction is dissolved, it is proper to dismiss the suit unless the plaintiff requests that it be retained for a trial on the merits.

Overruled: *Love v. Powell*, 67 T. 15; 2 C. A. 456.

The plaintiff is entitled to a trial on the merits, unless the right is expressly waived, and it is error to dismiss the suit though the plaintiff make no request for a trial on the merits.

NOTE.—See *King's Conflicting Cases*, Vol. 1, secs. 13, 53, 82, 95, 129, 201.

§ 127. *Ferguson v. Houston E. & W. T. Ry. Co.*, 73 T. 344 (11 S. W. 347).

A minor, when in his twentieth year, executed a power of attorney to sell land. When within a few months of his majority, accustomed to do business for himself as a man, he urged the execution of the power in pursuance of which a sale was made and the minor approved the sale. Two years after the sale was made he sued to recover the land without offering to refund the purchase money. *Held:* Whether the power of attorney be held void or voidable the plaintiff was not entitled to recover. If voidable, the suit should have been brought to avoid the sale within a reasonable time, and a return of the purchase money tendered.

Limited: *Bullock v. Sprowls*, 93 T. 188 (54 S. W. 661).

See *Cummings v. Powell*, § 97.

§ 128. *Filgo v. Citizens Natl. Bank*, 38 S. W. 237.

When, in the foreclosure of a chattel mortgage, a writ of sequestration is issued and bond given by defendants, the makers of the bond are liable thereon, though writ of sequestration should have been quashed.

Contra: *Mitchell v. Bloom*, 91 T. 634 (45 S. W. 558).

See *Sexton v. Hindman*, § 418.

§ 129. *First Natl. Bank v. Oliver*, 16 C. A. 428 (41 S. W. 414).

Revised Statutes 1895, article 1265-6, requiring a denial of partnership to be under oath, only relates to cases where

plaintiff alleges that it is a partnership, or that the defendants sued therein are partners, or, perhaps, where the defendant, by cross-bill seeks affirmative relief against the plaintiff and alleges a partnership.

Overruled: Gill v. First Natl. Bank, 47 S. W. 751.

Following Reed v. Brewer, 37 S. W. 418, the same court of civil appeals that decided Bank v. Oliver, overrules said case and holds that the existence of the partnership is admitted, unless denied under oath.

§ 130. Fitch v. Boyer, 51 T. 349.

We are of opinion, if the deed was properly recorded, that the subsequent removal or destruction of the record, without the fault of the party claiming under the deed, should not prejudice his right.

Contra: Barcus v. Brigham, 84 T. 538 (19 S. W. 703).

After four years from the destruction, etc., of the records of a county, the registry of a deed, in the books so destroyed, ceases to be noticed unless such deed be recorded again within four years from such destruction.

NOTE.—*The first case was decided before the act of July 13, 1876. Revised Statutes, article 4292.*

§ 131. Fitzmaurice v. Insurance Co., 84 T. 61
(19 S. W. 301).

The notice contained in a policy of insurance that "No agent has power on behalf of the company to bind the company by receiving any representation or information not contained in the application for this policy," will at least confine the authority thus to act to a general agent or to one acting in the scope of his employment, and the policy can not be avoided either by evidence that the applicant was in fact unacquainted with the contents of the application or that they were known to be false by the soliciting agent.

Contra: Wagner v. Winchester Fire Ins. Co., 92 T. 549 (50 S. W. 569).

Notice to an agent of the company, of facts existing at the time of the issuance of the policy, is notice to and binding on the company, although the policy provides that it shall not be such and that the agent has no power to waive the provisions of the policy.

NOTE.—*Morrison v. Ins. Co.*, 69 T. 363 (6 S. W. 605), was a case where the agent had power to waive the provisions, but the policy provided that he could only do it in writing, and it was held that he could waive the provision orally. The *Wagner* case goes still further and holds that he may waive any of the provisions orally, even though the policy denies him authority to waive them at all. The agent in the *Wagner* case was not a general but a local agent.

See note to *Pheonix Ins. Co. v. Dunn*, § 382.

§ 132. *Fleming v. Davis*, 37 T. 172.

Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (*currere solebat*), without diminution or alteration. No proprietor has a right to use the water to the prejudice of other proprietors above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment.

Overruled: *Barrett v. Metcalfe*, 33 S. W. 758.

A riparian proprietor has the right to divert the water, for irrigation, which flows in the stream along or through his lands, although the effect of such use is to leave another riparian proprietor, on the stream below, an insufficient supply for the same purpose.

NOTE.—See *Tolle v. Correth*, § 488, which is criticised by *Fleming v. Davis*. The effect of the decision in the overruling case is to reinstate *Tolle v. Correth*, and overrule *Fleming v. Davis*. The case of *Tolle v. Correth* was decided by the military or provisional supreme court, whose decisions are not recognized as authoritative precedents; nevertheless, that decision is in accord with the common law. The case of *Barrett v. Metcalf* was decided by the court of civil appeals, but a writ of error was by the supreme court denied, and, therefore, the law, as it now stands, recognizes the right of the upper riparian proprietor to use for the purposes of irrigation, all of the water in the stream, even to the exclusion of the lower riparian proprietor, except for domestic purposes.

See also the following authorities, which are in accord with the overruling case: *McGhee I. D. Co. v. Hudson*, 85 T. 587 (22 S. W. 398); *Irrigation Co. v. Vivion*, 74 T. 173 (11 S. W. 1078); *Baker v. Brown*, 55 T. 377; *Rhodes v. Whitehead*, 27 T. 309.

§ 133. **Florsheim Bros. Dry Goods Co. v. Wettermark**, 10 C. A. 102 (30 S. W. 505).

A creditor of an insolvent corporation, which has suspended business, may obtain a preference lien by attachment.

Contra: **Orr & Lindsley Shoe Co. v. Thompson**, 89 T. 501 (35 S. W. 473).

Where a corporation becomes insolvent and ceases to carry on its business, creditors can not acquire a preference lien upon the assets by attachment or other judicial process, because the assets become a trust fund for all its creditors.

NOTE.—**Moon Bros. Carriage Co. v. Waxahachie Grain & I. Co.**, 89 T. 511 (35 S. W. 1047), follows **Orr & Lindsley Shoe Co. v. Thompson**. In this case the court of civil appeals held that such a lien could be obtained, and a writ of error was refused, but on the ground that the corporation has not “ceased to do business.”

Harrison v. Quay, 27 S. W. (C. A.) 897, holds contrary rule to the later one established by the supreme court.

See **Harrigan v. Quay**, § 201.

§ 134. **Ford v. Cameron**, 1 W. & W., sec. 1112.

Where a party contracts to build a house and to finish the same within a specified time, or in default thereof, to pay \$10 per day for every day the building remains unfinished, the owner is entitled to recover the sum stipulated as liquidated damages. The agreement is not to be regarded as imposing a penalty, but as stipulating for liquidated damages.

Contra: **Collier v. Betterton**, 87 T. 440 (29 S. W. 468).

Although a sum be named as “liquidated damages,” the courts will not so treat it unless it bears such proportion to the actual damage that it may reasonably be presumed to have been arrived at upon a fair estimation, by the parties, of the compensation to be paid for the prospective loss. If the supposed stipulation greatly exceed the actual loss, if there be no approximation between them, and this be made to appear by the evidence, then and then only should the actual damages be the measure of the recovery.

NOTE.—**Durst v. Swift**, 11 T. 281; **Moore v. Anderson**, 30 T. 225; **Eaken v. Scott**, 70 T. 442 (7 S. W. 777); **Yetter v. Hudson**, 57 T. 604; **Collier v. Betterton**, 29 S. W. 490. The principle announced in the overruling case is only in-

tended to apply where evidence is offered tending to show that the actual damage sustained is less than the amount stipulated. Where there is no evidence offered, then the amount stipulated as liquidated damages will be the measure of the recovery. Haff v. O'Conner, 14 C. A. 191 (37 S. W. 238).

§ 135. *Fordyce v. Chancey, 2 C. A. 27 (21 S. W. 181).*

Evidence of subsequent repairs in the track are not admissible to show negligence.

Questioned: Texas & P. Ry. Co. v. Gay, 88 T. 111 (30 S. W. 543).

See G. C. & S. F. Ry. Co. v. McGowan, § 184.

§ 136. *Fordyce v. Dixon, 70 T. 694 (8 S. W. 504).*

An assignment of error which is neither signed by the complaining party nor his counsel can not be considered, and, when signed by neither, only such fundamental errors as are apparent on the face of the record, can be considered.

Contra: Bexar B. & L. Assn. v. Newmann, 86 T. 380 (25 S. W. 11).

Neither by the statute, nor by the existing rule on the subject, is it prescribed that assignments of error must be signed. It should be signed by counsel, yet if it is not signed, but has been copied in brief of party presenting it so as to identify it as his act, then the court should not, on account of failure to sign, refuse to consider it.

NOTE.—The case of Fordyce v. Dixon, was decided under rule 97, Code of Rules adopted in 1877, which was as follows: "The appellant or plaintiff in error shall file in the district court, at the time of filing a bond or affidavit for appeal, or bond for writ of error, an assignment of error, signed by the party or his counsel, prepared in accordance with the statutes and with the rules of the supreme court in relation thereto."

Rule 97 was abolished by the new rules adopted in 1891, and new rule 101 merely requires assignments of error to be filed in the trial court as required by statute, both the rules and statute being silent as to signing by party or his counsel.

§ 137. *Foster v. Powers, 64 T. 247.*

The purchaser under foreclosure, having possessed himself of the legal ownership of the land, was entitled to recover it

against a subvendee having no right except that of attaining title by payment of the consideration due, if indeed he had even that right in an action the only object of which was to try title to the land.

Limited: *Pierce v. Moreman*, 84 T. 596 (20 S. W. 821).

It matters not whether the relief be sought by a subvendee, by a suit against the purchaser under a foreclosure decree to which he was not a party, practically to enforce the right of the redemption or to establish his right to pay for and have the land, or be set up and claimed by him in an action by the purchaser to recover the land; and whenever set up, in either manner, such equity will be enforced.

NOTE.—*Cattle Co. v. Boone*, 73 T. 548 (11 S. W. 544); *Ufford v. Wells*, 52 T. 612; *Robinson v. Kampmann*, 5 C. A. 604 (24 S. W. 529); *Foster v. Andrews*, 4 C. A. 429 (23 S. W. 610); *Ferguson v. McCrary*, 20 C. A. 529 (50 S. W. 472).

The first two cases mentioned in the note seem to follow the limited case and to intimate that a subvendee, in an action of trespass to try title, brought by a purchaser at a foreclosure sale, to which the subvendee was not a party, could not assert his equity of redemption. The case of Pierce v. Moreman announces the better rule and is supported both by reason and authority in holding that a subvendee who has not been made a party to the original foreclosure can in any character of proceeding successfully defend his title by tendering the amount necessary to redeem.

§ 138. *Fowler v. Davenport*, 21 T. 627.

Interest can not be allowed *as a matter of law* except upon contracts in which an agreement to pay interest is expressed or can be implied.

This was a suit against common carriers for cotton lost in shipping and it was held that the measure of damages was the net value of same at the place of destination, but that interest could not be allowed as a matter of law. In such cases it is not an incident to the debt but may be allowed under circumstances by way of mulct or punishment for some fraud, delinquency or injustice of the debtor or for some injury done by him to the creditor.

Overruled: *H. & T. C. Ry. Co. v. Jackson*, 62 T. 209.

In a suit for cotton lost or delayed by shipping, the true measure of damages will include interest as a matter of law.

NOTE.—In *Watkins v. Junker*, 90 T. 584 (40 S. W. 11), Justice Brown, after reviewing the cases, says: "If interest be properly an element of damages in any case, then it is so as a matter of law, whether the case is such that the law makes it applicable is a question of fact for the jury, but whether or not it is to be allowed if the facts exist is a question of law that should not be left to the jury. We think that it is an inconsistency to say that a right exists, which a jury may or may not enforce as they may deem proper, and we believe, that, practically, the courts have come to the proposition that, in all cases where the measure of recovery is fixed by the conditions existing at the time that the injury is inflicted, the person entitled to recover has also the right to have compensation for the detention of the money to which he is entitled by reason of the wrong done him."

It is also held by the supreme court that the interest in such cases is to be included in fixing jurisdictional amounts—that the clause, "exclusive of interest," used in the constitution, does not refer to this class of cases. *Baker v. Smelser*, 88 T. 26 (29 S. W. 377).

In *Railway v. Chambliss*, 53 S. W. 343, however, the supreme court holds that the interest is not allowed on the value of stock killed.

See *G. C. & S. F. Ry. Co. v. Wedel*, § 187, and note.

§ 139. *Fowler v. Simpson*, 79 T. 614 (15 S. W. 682).

Here it was held proper to permit John J. Fowler, "one of the plaintiffs, to testify to the declaration of his father, James Burton Fowler, that he was the surviving brother and only heir of Sam and John Fowler, made before he had conveyed the land to plaintiffs."

Limited: *Byers v. Wallace*, 87 T. 503 (28 S. W. 1056).

In this case a similar declaration was held self-serving and incompetent. Justice Brown refers to *Fowler v. Simpson*, and concludes that the objection that the declaration was self-serving was not made in that case, and that it does not decide the question, but adds that, "If it is to be so understood, however, we would be constrained by authority and reason to overrule it."

NOTE.—*Scott v. Pellerim*, 43 S. W. (C. A.) 944; *Nehring v. McMurray*, 57 S. W. (Sup.) 943.

§ 140. *Fowler v. State*, 68 T. 30 (3 S. W. 255).

A proceeding by *quo warranto* may be filed by a district attorney pro tem, appointed during a term of court by the district judge, on account of the non-attendance of the district attorney, and as such he has authority to maintain such proceeding in the name of the state.

Overruled: *State v. I. & G. N. Ry. Co.*, 89 T. 562 (35 S. W. 1067).

The Revised Statutes of 1895, article 4343, in so far as it attempts to confer on district and county attorney's authority to institute proceedings in the nature of *quo warranto* in the name of the state against a private corporation, exercising power not conferred by law, contravenes article 4, section 22, authorizing the attorney-general to bring such proceedings, and, therefore, the attorney-general alone is authorized to bring such proceedings.

See § 349.

§ 141. *Fowler v. Stonium*, 6 T. 60.

The better opinion would seem to be that without the judgment the verdict is not evidence of the facts found by it.

Overruled: *Hume v. Schintz*, 90 T. 72 (36 S. W. 429).

The verdict of a jury, when the time has passed in which the court has power to set it aside, is an adjudication of the facts at issue in the case, and may be pleaded in bar of another suit on the same cause of action, though no judgment has been entered upon it.

NOTE.—*Hume v. Schintz*, 91 T. 204 (42 S. W. 543).

§ 142. *Fowler v. Waller*, 25 T. 695.

An employee, wrongfully discharged before the expiration of his contract, must allege and prove that he could not obtain other employment or show what employment he has been able to obtain, and what he has received therefor.

Contra: *Porter v. Burkett*, 65 T. 383.

It is not necessary for an employee to allege that he could not have saved himself from the consequences of the default of the employer by obtaining work elsewhere. This is a matter of defense to be shown by the opposite party.

NOTE.—*In accord with the earlier case, see Hearne v. Garrett*, 49 T. 619.

Following *Porter v. Burkett*, see *S. W. Tel. & Tel. Co. v. Bross*, 45 S. W. 178; *Allgyer v. Rutherford*, 45 S. W. 628.

The rule laid down in the case of *Fowler v. Waller*, seems the more logical one, because in such cases, the plaintiff's "cause of action is not for the wages contracted, but it is for damages for the breach of the contract" (*Lichenstein v. Brooks*, 75 T. 98). It is his duty to seek other employment and the measure of his damages is the difference between what he has been able to earn and what he would have earned under his contract. If his cause of action is not "for the wages contracted for," then how can it be said that he has made out his case by proving the amount of such wages. Again, these are facts peculiarly within the employee's knowledge, and it is a familiar rule of evidence that in such cases the burden is on him to prove them.

§ 143. *Freedman v. Bonner*, 40 S. W. (C. A.) 47.

For the purpose of impeachment, a witness can not be asked, on cross-examination, if he is not under indictment for forgery.

Contra: *Texas & Pac. Ry. Co. v. Lawson*, 10 C. A. 491 (31 S. W. 843).

See *Hill v. Dons*, § 219, and note.

§ 144. *French v. Koenig*, 8 C. A. 341 (27 S. W. 1079).

A headright certificate for a league and labor was issued to Willis. After the death of his wife, he transferred the certificate. In a suit by the heir of the wife, against the vendee, to recover her community interest, it was held, that the conveyance by the husband conveyed not only his interest, but that of the wife.

Contra: *Hensel v. Keegans*, 8 C. A. 583 (28 S. W. 705).

A purchaser of a headright certificate takes it with notice of the claim of the wife of the person to whom it was issued.

NOTE.—In both cases, the plea of stale demand became the controlling issue, and on this plea the decision in both cases turned. The principle announced in the first case was not necessary to its decision. The court in that case, held that the plea of stale demand was not applicable, and in the second case, it held that it was applicable. There is no conflict, however, between the cases upon this point, for the reason that in

the first case the stale demand was pleaded against a plaintiff out of possession, and in the second case, the stale demand was pleaded by a defendant in possession, the court in the last case rightly holding that the doctrine of stale demand has no application to a defendant in possession, who is asserting an equitable title.

§ 145. *Friberg v. Collender Co.*, 4 W. & W., sec. 144.

The declarations of an agent are not admissible without proof of agency, and without proof that in making such declarations, he was acting within the scope of his apparent authority as such agent.

Limited: *Stiff v. Fisher*, 2 C. A. 346 (21 S. W. 291).

It was not required, however, that the proof of agency should be full and satisfactory before one's acts and declarations as agent are admissible as testimony.

§ 146. *Freiberg v. DeLamar*, 7 C. A. 263 (27 S. W. 151).

In the absence of pleading or proof of fraud or other misconduct, a married woman's acknowledgment, regular upon its face, is not invalid because there was in fact no privity examination, and that she did not acknowledge the same to be her act and deed, even though the vendee be not an innocent purchaser for value.

Contra: *Waltee v. Weaver*, 57 T. 569.

The certificate to the privity acknowledgment of a married woman, regular upon its face, is conclusive of the facts therein stated, when the conduct of the grantee is in good faith and he pays a valuable and adequate consideration for the property.

NOTE.—*Wiley v. Prince*, 21 T. 640; *Kocourek v. Marak*, 54 T. 201; *Pool v. Chase*, 46 T. 207; *Beattie v. Kellar*, 49 S. W. (C. A.) 408; *Soyler v. Romanet*, 52 T. 562; *Hurst v. Finley*, 22 C. A. 605 (54 S. W. 1072); *Forbes v. Thomas*, 51 S. W. (C. A.) 1097; *McDannell v. Horrell*, 1 Posey Urep. Cas. (T.), 521.

The principle announced in the overruled case is unsupported except by the case of Hartley v. Frosh, 6 T. 208. *The Texas authorities, with the exceptions above noted, are uniform in holding that a certificate of a married woman's acknowledgment upon its face not in conflict with the statute, renders the deed absolutely void, regardless of whether the vendee be an*

innocent purchaser, for value or not. If the deed be regular upon its face, and the vendee be a purchaser for value, then the wife is concluded by the officer's certificate, unless she allege and prove that fraud was practiced upon her, of which the vendee had notice. If the certificate be regular upon its face, although defectively acknowledged, it is invalid as to a vendee who has not paid value, if the wife can prove that there was no privy examination by the officer, as required by the statute.

§ 147. *Fulshear v. Lawrence*, 1 W. & W., sec. 631.

In a suit by a resident plaintiff against a non-resident defendant, the jurisdiction does not depend upon attachment proceeding. Such suit, upon service by publication, may be prosecuted to judgment which will be valid against the property of the defendant, found in this state.

Contra: *Scott v. Streepy*, 73 T. 547 (11 S. W. 532).

See *McMullen v. Guest*, § 319.

§ 148. *Gaines v. Bank*, 64 T. 18.

This case apparently recognizes the doctrine announced in *Calvert v. Roche*, that where the judgment debtor holds the legal title in trust for another, and he discharges the trust by conveying to the *cestui que trust*, but the conveyance is not placed of record, the land conveyed is subject to the lien of the judgment in the absence of notice to the judgment creditor before the lien attaches.

The question was not decided, however.

Overruled: *John B. Hood Camp, Conf. Vets. v. DeCordova*, 92 T. 202 (47 S. W. 522).

See *Calvert v. Roche*, § 50.

§ 149. *Gallagher v. Bowie*, 66 T. 265 (17 S. W. 407).

The degree of care required of carriers of passengers, is generally described by authorities to be "the utmost," hence, it is not error to use these terms in the charge to the jury.

Contra: *Fort W. & D. C. Ry. Co. v. Rogers*, 60 S. W. 61.

See *McCarty v. H. & T. C. Ry. Co.*, § 306.

§ 150. *Galveston City Ry. Co. v. Galveston C. S. Ry. Co.*, 63 T. 529.

The grant to one railway company of the right to build a

railway upon certain streets already named in a grant made to another railway, is a withdrawal, as to these streets, of the privilege previously accorded to the latter company.

Overruled: Galveston City S. Ry. Co. v. Galveston City Ry. Co., 65 T. 503.

The opinion on the former appeal of this case (63 T. 529), was never adopted by the supreme court, is improperly in the reports, and not binding as an authority.

§ 151. Galveston Gas Co. v. Galveston County, 54 T. 287; (Id. 72 T. 509).

One paying an illegal tax under protest, to prevent a sale, is entitled to recover back amount paid, with interest, because the sale for such tax, under the provisions of section 12, article 8, Constitution 1876, and section 18, act of August, 1876, would cast a cloud on the title and therefore the payment is not voluntary.

Contra: Davie's Ex'rs v. City of Galveston, 16 C. A. 13 (41 S. W. 145).

The sale of land for an illegal tax will not cast a cloud on a party's title, and therefore a payment, even under protest, to prevent such sale, is voluntary and can not be recovered back.

NOTE.—In none of the cases cited in the last opinion was the payment made where the property had been advertised for sale, and under the circumstances of these cases, none of them could be called compulsory sales. However, the rule laid down in *Davie's v. Galveston* seems to be more in conformity with the doctrine announced in *Meredith v. Coker*, 65 T. 29, that a tax deed is not *prima facie* evidence of title in the purchaser, or any evidence whatever, without proof of all the prerequisites for conferring power upon the collector to make the sale. See, also, *Eustis v. Henrietta*, 90 T. 474 (39 S. W. 567).

The case of *Cassiano v. Ursuline Academy*, 64 T. 673, was one where the sale would certainly have cast a cloud on the title, (or rather passed title), because there was no invalidity in the tax—only exemption claimed for the property itself.

It seems that if the party paying the tax to prevent sale, did not have knowledge of the facts rendering the tax illegal, he could recover, unless he is charged with notice of such facts by the record. *Houston v. Feeser*, 76 T. 367 (13 S. W. 266).

Following *Galveston Gas Co. v. Galveston County*, see

same case, 72 T. 519, and *Galveston County v. Galveston Wharf Co.*, 72 T. 557.

See *Hardesty v. Fleming*, § 198.

§ 152. *G. H. & S. A. Ry. Co. v. Becht*, 21 S. W. (C. A.) 971.

In an action for damages to real estate, it is error to admit in evidence the value of the rents and the loss of them in consequence of the injury done to the house.

Contra: *M. K. & T. Ry. Co. of Texas v. O'Connor*, 51 S. W. (C. A.) 511.

In an action for permanent injury to land, evidence of its rental value, before and after the unlawful act charged, is admissible to prove the depreciation in the value of the lands.

NOTE.—*The last case cites and seems to be in accord with rule of the supreme court in H. & T. C. Ry. Co. v. Mollay*, 64 T. 607.

§ 153. *G. H. & S. A. Ry. Co. v. Cooper*, 2 C. A. 42
(20 S. W. 990).

[Writ of error refused.]

In an action for damages for injuries which are shown to be permanent, whereby plaintiff's earning capacity has been practically destroyed, it is admissible to prove his life expectancy by mortuary tables.

Contra: *City of Honey Grove v. Lamaster*, 50 S. W. (C. A.) 1053.

The mortuary tables are not admissible to show life expectancy unless the injury resulted in the death of the party or in the entire destruction of his earning capacity.

NOTE.—*The Cooper case is referred to in City v. Lamaster, and the ruling approved on the ground that the court there found the earning capacity to have been totally destroyed. A reference to the Cooper case will show that it does not so find, and the court seems to have been of the opinion that it was not necessary to show total disability in order to admit such tables in evidence. On principle it would seem that if such tables are admissible in cases of death or total disability, no good reason exists why they are not admissible in cases of partial disability, where it is shown to be permanent. The object of admitting such evidence is to assist the jury in ascertaining the probable duration of the party's life and thereby find what pecuniary*

loss, in the way of earning capacity, he has suffered, and if his capacity has been diminished only one-half or two-thirds, it would seem that such tables would furnish them as safe a guide in such cases as in death or total disability cases.

See note to *S. A. & A. P. Ry. Co. v. Morgan*, § 412; *Railway v. Douglas*, § 462.

§ 154. *G. H. & S. A. Ry. Co. v. Hughes*, 22 C. A. 134
(54 S. W. 264).

In a suit to recover damages for the death of a son or husband or father, the plaintiffs are entitled to recover a sum equal to the pecuniary benefit they would have received had he not died.

Contra: *Ft. Worth & D. C. Ry. Co. v. Morrison*, 93 T. 527 (56 S. W. 745).

In such cases, the true measure of damages is not the amount of the pecuniary aid the plaintiffs would have received, or had a reasonable expectation of receiving, but the present value of such pecuniary aid, or such a sum as, paid at the time of trial, would be a fair compensation for the loss of such pecuniary aid.

NOTE.—Under the decision in the *Morrison* case, the true rule is held to be the present value of the pecuniary aid, but the jury are to be left free to determine what that present value is, and whether or not a less sum paid now, would compensate the plaintiffs.

It has been contended in several cases that the future earnings in such cases should be discounted on the basis of six per cent, but this contention has been denied. See Railway v. Denisch, 57 S. W. 64, *where the court of civil appeals (4 Dist.) says such a rule would not be proper "because an investment of the present worth so found, at six per cent, would not yield the value of the future earnings. It is judicially known that some of this six per cent must go for taxes and expenses of investment, to say nothing of the vicissitudes attending the loan of money."*

A similar rule was contended for and denied in the case of S. A. & A. P. Ry. Co. v. Englehorn, 62 S. W. 561, *in which a writ of error was refused by the supreme court.*

The case of Ry. v. Leoffler, 51 S. W. (C. A.) 536, *is in accord with Railway v. Morrison.*

Cases overruled by Railway v. Morrison: Railway v.

Powers, 54 S. W. 629; *Railway v. Lee*, 70 T. 496 (7 S. W. 860); *City v. Barbour*, 62 T. 174; *Railway v. Hines*, 40 S. W. 158.

§ 155. *G. H. & S. A. Ry. Co. v. Matula*, 79 T. 577.
(15 S. W. 573).

The law requires those in charge of railway trains to use *great* care and prudence in operation of them, so as to avoid damage and injury to the property and persons of other people.

Contra: *G. C. & S. F. Ry. Co. v. Smith*, 87 T. 349 (28 S. W. 520).

Railroad companies, at crossings, and such portions of its tracks as may be commonly used as footways or crossings, which use is known to the company, and at which persons may be expected, must use *ordinary* care to discover their presence and to avoid inflicting injury upon them.

NOTE.—*Railway Co. v. Cresnoe*, 72 T. 79 (10 S. W. 342); *S. A. St. Ry. Co. v. Melcher*, 87 T. 628 (30 S. W. 899, 29 S. W. 202); *St. Ry. Co. v. Witten*, 74 T. 205 (12 S. W. 34); *Artusy v. Missouri Pac. Ry.*, 73 T. 191 (11 S. W. 117); *Railway Co. v. McDonald*, 75 T. 41 (12 S. W. 860); *Railway Co. v. Hewett*, 67 T. 473 (3 S. W. 705); *Hays v. Railway*, 70 T. 602 (8 S. W. 491).

§ 156. *G. H. & S. A. Ry. Co. v. Michalke*, 37 S. W. (C. A.) 480.

[See also 90 T. 276 (38 S. W. 31)].

It is proper to submit to the jury as a question of fact, whether a railway company was guilty of negligence in allowing obstructions to be placed along its right of way.

Contra: *I. & G. N. Ry. Co. v. Knight*, 91 T. 663 (45 S. W. 557).

A railway company has the absolute right to place such obstructions along its rights of way as it sees fit, and the exercise of such right can not of itself be negligence, *either in law or in fact*. The existence of such obstructions may be shown on the question as to whether or not the defendant was guilty of negligence in the operation of the train at that point.

NOTE.—*The supreme court refused a writ of error in the Michalke case where it was submitted to the jury to determine whether the company was guilty of negligence in placing*

obstructions along the track. Judge Gaines says, in the opinion refusing the writ: "We deem it proper to say that we do not question the right of a railway company, as a general rule, to erect structures necessary for the prosecution of its business, and to leave standing cars upon its track near a street or road crossing, but we think that the circumstances of a case may be such that, as a matter of fact, it may be negligence to do so."

In *Railway Co. v. Rogers*, 91 T. 56 (40 S. W. 956), and *Railway v. Knight*, the supreme court seems to have modified its opinion on this question, and now holds that the placing of such obstructions is not negligence, either as a matter of law or fact, and in the latter case says: "We doubt the propriety of giving any specific instructions to the jury with reference to the obstructions."

See also *G. H. & S. A. Ry. Co. v. Harris*, 22 C. A. 16 (53 S. W. 599).

§ 157. *G. H. & S. A. Ry. Co. v. Powers*, 54 S. W. (C. A.) 629.

In a suit for damages by a parent, for the death of a son, he is entitled to recover a sum equal to the pecuniary benefit he had a reasonable expectation of receiving from the son, had he not died.

Contra: *Railway v. Morrison*, 93 T. 527 (56 S. W. 745).

See discussion in note to *Railway v. Hughes*, § 154.

§ 158. *Garner v. Thompson*, 2 U. C. 234.

When land is purchased during the marriage and the title taken in the name of the husband, a purchaser from him after the death of the wife must take notice of the title papers of the land he purchases, our marital rights laws, the existence of the vendor's family, and their rights to the land he contemplates purchasing.

Contra: *Mangum v. White*, 16 C. A. 254 (41 S. W. 80).

A purchaser, for value, of community lands, after the wife's death, from the husband who has legal title, takes the land free from equitable community title in the wife's heirs, when he has had no notice thereof or of facts sufficient to put him on inquiry.

NOTE.—The following decisions support the last case: *Patty v. Middleton*, 82 T. 586 (17 S. W. 909); *Edwards v. Brown*, 68 T. 329 (4 S. W. 380, 5 S. W. 87); *Hill v. Moore*,

62 T. 613; *Ross v. Kornrumpf*, 64 T. 394; *Sanborn v. Schuler*, 86 T. 116 (23 S. W. 64, 22 S. W. 119); *Kirby v. Moody*, 84 T. 203 (19 S. W. 453); *Oppenheimer v. Robinson*, 87 T. 174 (27 S. W. 95); *Japhet v. Stiles*, 84 T. 91 (19 S. W. 450); *Woodward v. Suggett*, 59 T. 620; *Pouncey v. May*, 76 T. 565 (13 S. W. 383).

The conflict between the contra cases arose in confusing the legal with the equitable title. The following principles can now be considered as well settled by the above decisions, and are concisely stated in notes to Batt's Annotated Statutes:

"That when a conveyance is made to the husband or wife during coverture, the property is presumed to be community in the absence of language indicating that it is to the separate use of one of the spouses.

"That the interest of each is the same (subject to rights of the husband as to disposition and management), and that, upon the death of one, the survivor and the heirs of deceased have an equal interest (subject to the right of the survivor to sell to pay debts or after filing inventory and bond under the statutes).

"That the legal as distinguished from the equitable title is in the member of the community to whom the conveyance is made, and that upon the death of one of the spouses his or her heirs have the same character of title as the ancestor.

"That if the separate funds of the wife be invested and the deed be made to her without words limiting the estate to her separate use, the legal title will be in her, the legal estate will be in her, the apparent legal estate will be in the community, and the apparent power of disposition will be in the husband.

"That a purchaser from the member of the community having either the legal title or the apparent right of disposition, for a valuable consideration, without notice of the rights of the other member of the community or the heirs of such member, will be protected."

§ 159. *Garrison v. Blanton*, 48 T. 300.

It is competent for a witness to give his opinion as to one's mental capacity to make a will.

Overruled: *Brown v. Mitchell*, 88 T. 350 (36 S. W. 621).

It is incompetent for one to give his opinion as to the legal capacity of deceased to make a will.

NOTE.—The following cases are in accord with the over-

ruled case: *Cockrill v. Cox*, 65 T. 669; *Brown v. Mitchell*, 75 T. 15 (12 S. W. 606); *Reynolds v. Dechaums*, 24 T. 174.

Following *Brown v. Mitchell*, see *Mills v. Cook*, 57 S. W. (C. A.) 70.

§ 160. *Gayosa Savings Inst. v. Burrow*, 37 T. 88.

Where a foreign corporation, owning lands in Texas, is declared insolvent, and the property placed in the hands of a receiver by a court in Tennessee, the lands owned by the corporation passed to the receiver, and the attachment issued by a court in this state was void.

Overruled as dicta: *Moseby v. Burrow*, 52 T. 396.

The courts of one state can not make a decree ordering the conveyance of land situated in another state, which will be recognized as valid by the courts of the state in which the land is located. So much of the opinion to the contrary in *Gayosa Savings Inst. v. Burrow*, is *obiter dictum*.

NOTE.—It is now well settled that the appointment of a receiver of a corporation in another state, does not pass to him title to the company's property in Texas.

See *T. & P. Ry. Co. v. Gay*, 86 T. 571 (26 S. W. 599).

§ 161. *Gilder v. City of Brenham*, 67 T. 345 (3 S. W. 309).

In a suit between the city authorities and the representatives of the original owner of a tract of land who had dedicated the space to the public as a street so far as the owner could, by his own action, make a dedication, *held*: "That before the city could assert control over the property as a street, it must appear that it had accepted the dedication; and that acceptance may be implied on the part of the city from acts clearly indicating a purpose to accept, or from a continuous use by the public for such a period of time as would authorize the presumption of a grant, when adjacent improvements have been established with reference to the property as a street. The city never having marked the space, claimed to have been dedicated as a street, dedicated it on its maps as a street, or claimed it otherwise as such, an acceptance of the dedication could not be implied. That the rule that acceptance may be implied alone from long continued use by the public, can not obtain in Texas as applicable to every case."

Limited: *Albert v. G. C. & S. F. Ry. Co.*, 2 C. A. 666 (21 S. W. 779).

When the evidence raises the question whether a street has been dedicated to the public, and accepted by it so as to prohibit the revocation of such dedication, an instruction, that, in order to constitute a highway in a city, "it is necessary that it should have been used as such and accepted as such by the city council by some act assuming control over it, and sufficient, in the opinion of the jury, to establish that it was accepted and recognized by such city as a public highway," is too restrictive, since there need be no affirmative action on the part of the commissioners' court, or the city council.

NOTE.—*In accord with Gilder v. Brenham—Worthington v. Wade*, 82 T. 26 (17 S. W. 520); *Railway v. Montgomery*, 19 S. W. 1015.

In accord with Albert v. Railway, are Railway Co. v. Lee, 70 T. 496 (7 S. W. 857); *Oswald v. Grenet*, 22 T. 94, and *Ramthun v. Halfman*, 58 T. 553.

§ 162. *Gillmour v. Ford*, 19 S. W. (Sup.) 442.

Where a suit is brought to foreclose lien that secures a debt which is only partly due, it is proper to render judgment on the undue portion of the debt with interest up to the time of the trial.

Overruled: *Warren v. Harrold*, 92 T. 417 (49 S. W. 364).

In such a suit, it is clear that a court can not properly render judgment for a debt not due and award an ordinary execution for its enforcement. The utmost to which the court can go as to so much of the debt secured by the lien as is not due, is to ascertain its equitable amount as of the date of trial, and, in case a sale of the whole property is ordered, to decree that, if any surplus remain from the proceeds of the sale after the payment of costs and the matured debt, it shall be applied to that which is not due. *Tinsley v. Boykin*, 46 T. 592, is referred to as stating the correct rule and the expression in *Gillmour v. Ford*, as being a dictum.

§ 163. *Glasscock v. Stringer*, 32 S. W. (C. A.) 921.

By abandonment of land as a homestead, a previously filed and registered judgment is not rendered a lien on the land.

Contra: *Marks v. Bell*, 31 S. W. (C. A.) 699.

A duly recorded judgment against the owner of land, exempt as a homestead, attaches as a lien on the land when it

loses its homestead character.

NOTE.—*The doctrine of Marks v. Bell, was recognized as being correct on the motion for a rehearing in Glasscock v. Stringer, 33 S. W. 677.*

§ 164. *Glenn v. Kimbrough, 70 T. 147 (8 S. W. 81).*

Notice of appeal from a decree in probate is not necessary.
Limited: *Smithwick v. Kelley, 79 T. 575 (15 S. W. 486).*

On general principles, he who would appeal from the judgment of any court must do so in open court at the time when the judgment is procured, and the fact should appear in the proceedings of the case.

This is the rule asserted in *Battle v. Howard*, with reference to probate proceedings, and is approved in *Smithwick v. Kelley*, which refers to *Glenn v. Kimbrough*, and says the bond in that case was filed within the fifteen days prescribed by law, "and it may be that it was intended in such cases that parties adversely interested should take notice of that fact and thus have notice of appeal."

NOTE.—*Western U. Tel. Co. v. O'Keefe, 87 T. 426.*

§ 165. *Gonzales v. City of Galveston, 84 T. 3*
(19 S. W. 284).

Where a city had permitted a pile of lumber to be piled in a public street for a long time, and it was struck by a drayman and thereby caused to fall on another party, it was a question of fact for the jury to determine whether the city was guilty of negligence in allowing the lumber to remain there, and whether it had notice, and where they found these facts in the affirmative, the city was liable to the person injured.

Questioned: *Texas & Pacific Ry. Co. v. Bigham, 90 T. 223*
(38 S. W. 162).

In this case it was held that where the railway company was guilty of negligence in permitting the gate of a stock-pen to remain out of repair and the cattle were frightened by a train while the shipper was trying to fasten the gate with a rope, and suddenly broke out and ran over him, injuring him and some of the cattle, the company was liable for the injury to the cattle *but not for the personal injury to the shipper.*

The opinion says of *Gonzales v. Galveston*: "The principles announced in *Gonzales v. Galveston* are correct, *but we*

are not clear that they were properly applied in that case."

NOTE.—In the *Bigham* case, the ruling of the supreme court was based on the ground that the company could not reasonably have anticipated any such result of its negligence as the injury to the shipper from being run over by the cattle. The question discussed in the *Gonzales* case was simply one of proximate cause, it was there held that while the injury would not have occurred but for the act of the drayman, neither would it have occurred but for the act of the city in permitting the lumber to remain piled on the street, and, therefore, the city's negligence was a concurring cause. The question as to whether the city could have foreseen such a result from the lumber being knocked down, as the injury that occurred to *Gonzales*, was not referred to.

§ 166. *Gordon v. McCall*, 20 C. A. 283 (48 S. W. 1114).

Where improper evidence is admitted over formal objections, on a vital point in the case, and there is nothing in the record to show that it was not considered by the judge in deciding the issue, the court, on appeal, can not say he was not influenced by the evidence, and, hence, must hold that there was error.

Contra: *Ward v. Armistead*, 17 C. A. 374 (43 S. W. 63).

Where a case has been tried before the court, without a jury, it will not be reversed because of the admission of improper evidence, where there is competent evidence, because it will be presumed, in such a case, that the court based its decision upon the competent testimony.

See *Wagner v. Rupley*, and note, § 500.

§ 167. *Grady v. Rogan*, 2 W. & W., sec. 259.

In a suit brought by a county judge for the use of the county upon a retail liquor-dealer's bond, to recover the penalty of five hundred dollars, for a breach of the conditions, the county court has exclusive jurisdiction, it not being a suit in behalf of the state to recover a penalty or forfeiture, and, therefore, not within the jurisdiction of the district court.

Overruled: *State v. Stoutsenberger*, 4 W. & W., sec. 247.

A suit upon a liquor-dealer's bond, to recover the penalty of five hundred dollars for breach of the conditions, must be brought in the name of the state, and in the district court.

NOTE.—*The opinion in the overruling case is in direct conflict with the overruled case, upon the jurisdictional question, but reaffirms the overruled case upon the question of the right of the county judge to maintain the action. It must be borne in mind that the overruled case was tried under the act of March 11, 1881, while the overruling case was tried under the act of March 29, 1887.*

§ 168. *Grant v. Hill*, 30 S. W. 952.

After this case was submitted and determined, a writ of certiorari was asked by plaintiff in error requiring the clerk of the court below to file in this court, a copy of the notice to plaintiff to file an abstract of title. If a cause has been submitted and decided on a transcript, a motion for a writ of certiorari to supply an omission in the record comes too late.

Contra: *W. U. Tel. Co. v. O'Keefe*, 87 T. 423 (28 S. W. 945).

See *McMickle v. Texarkana National Bank*, § 318.

§ 169. *Graves v. Hickman*, 59 T. 383.

It is a general rule that where an infant has sold land and the purchaser believes him to be of age, if after attaining his majority, the infant disaffirms his contract and recovers back the land, he must tender the purchase money.

Limited: *Bullock v. Sprowls*, 93 T. 188 (54 S. W. 661).

See *Cummings v. Powell*, § 97.

§ 170. *Green v. Brown*, 4 C. A. 162.

Defendant pleaded in abatement his privilege to be sued in the county of his residence. *Held*, that no action being demanded upon the plea at the term at which it was filed, but at said term the cause was continued by consent, the plea was waived.

Contra: *Howeth v. Clark*, 4 W. & W., sec. 314.

The defendant filed a plea in abatement, setting up his residence in a precinct other than the one in which the suit was brought, no other defense being filed. The plea was sustained by the justice and the cause dismissed. The plaintiff appealed. In the county court the defendant amended his plea, and the cause was continued, but on motion, the court at the succeeding term dismissed the cause on the ground that no final judgment had been entered in the justice court. *Held*,

that the defendant by agreeing to try his cause at a later term, did not waive his plea in abatement, and to so hold is carrying the rule of practice to an extent unauthorized by any of the decisions.

NOTE.—See *Peveler v. Peveler*, § 379. See also §§ 7, 24, 398, 492 and 516.

§ 171. *Griffin v. Boyd*, 46 S. W. (C. A.) 664.

Though a note, was originally procured by fraud, the endorsee has not the burden of proving that he acquired it bona fide and for value.

Contra: *Hart v. West*, 91 T. 184 (42 S. W. 544).

Where it is shown that the note sued on was fraudulently put in circulation, the burden is on the plaintiff (an endorsee) to show that he is an innocent purchaser, for value.

NOTE.—In *Prouty v. Musquiz*, 58 S. W. (Sup.) 721 and 996, the rule is more accurately expressed, that where fraud is shown in the inception of the instrument, the plaintiff must show that he paid value for it in the usual course of business, and if the circumstances attending the transfer cast no suspicion upon the fairness of his intent, he need go no further, and it then devolves upon the defendant to show notice to him in order to defeat a recovery.

See § 351.

§ 172. *Grigsby v. Peak*, 57 T. 142.

Section 43, article 12, Constitution of 1869, providing that "the statutes of limitation were suspended by the so-called act of secession of the twenty-eighth of January, 1861, and shall be considered as suspended within this state until the acceptance of this constitution by the United States Congress," did not take effect until March 30, 1870.

Overruled: *Peak v. Swindle*, 68 T. 242 (4 S. W. 478).

Section 43, article 12, Constitution 1869, took effect at the time the constitution was ratified by the people of Texas—December 3, 1869.

NOTE.—See *King's Conflicting Cases*, vol 1, §§ 16, 17, 132, 153, 166, 193, and 255, wherein a number of cases are overruled upon the same question, by the same case.

§ 173. *Groesbeck v. Harris*, 82 T. 411 (19 S. W. 850).

Actual eviction is not necessary for a vendee to maintain his suit on the warranty. If he can show that there was a superior outstanding title to the land of which he had no notice at the time of his purchase, he is entitled to recover the purchase money to the extent of the conflict, although not disturbed in his possession.

Overruled: *Rancho Bonito L. & L. Stock Co. v. North*, 92 T. 72, (45 S. W. 995).

A vendee can not recover for breach of warranty where he has not been evicted by showing an outstanding title.

NOTE.—*Doyle v. Hord*, 67 T. 621 (4 S. W. 241), distinguished in *Rancho, etc., Co. v. North, supra*.

§ 174. *Guinn v. Musick*, 41 S. W. (C. A.) 723.

Though a recorded deed is defectively acknowledged, a certified copy of it is admissible in evidence as a circumstance to show the execution of such an instrument.

Contra: *Heintz v. Thayer*, 92 T. 658 (50 S. W. 929, 51 S. W. 640).

See *Ammons v. Dwyer*, § 4.

§ 175. *Gulf C. & S. F. Ry. Co. v. Allison*, 59 T. 193.

When a carrier undertakes to carry goods, not only over his own route but over connecting lines, he can not contract that his responsibility may terminate at the end of his own line. He will still be held responsible for the negligence, not only of himself and his servants, but of the connecting line, they being his agents for carrying out the particular contract.

Contra: *Gulf C. & S. F. Ry. Co. v. Baird*, 75 T. 256 (12 S. W. 530).

A carrier which makes a contract for through carriage is liable for an injury occurring on a connecting line, but it may exempt itself from such liability by contract.

NOTE.—*The following authorities are in accord with the overruled case:* *Texas Express Co. v. Dupree*, 2 W. & W., sec. 318; *Railway v. Golding*, 3 W. & W., sec. 34; *Railway v. Logan*, 3 W. & W., sec. 187.

The following authorities are in accord with the overruling case: *Hunter v. So. Pac. Ry. Co.*, 76 T. 195 (13 S. W. 190); *Ft. W. & D. C. Ry. Co. v. Williams*, 77 T. 121 (13 S. W.

Overruled: G. C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150, L. Ed., Bk. 41, p. 666.

On appeal in this case the Supreme Court of the United States declared the act in question unconstitutional on the ground that no individuals, nor other corporations were thus punished. "The act singles out a certain class of debtors and punishes them, when for like delinquencies it punishes no others."

§ 181. G. C. & S. F. Ry. Co. v. Evansich, 61 T. 3.

It is the duty of a railway company to keep its turntables or other dangerous machinery, such as is likely to attract children to it for the purposes of amusement, locked or guarded to prevent children, without discretion, from being injured thereon.

Contra: Dobbins v. M. K. & T. Ry. of Texas, 91 T. 60 (41 S. W. 62).

The law does not impose upon a railway company the duty to use care to keep its premises in such a condition that a child of tender years going thereon without invitation may not be injured.

NOTE.—Other turntable cases that have been overruled by *Dobbin v. Railway* are—*G. C. & S. F. Ry. Co. v. McWhirter*, 77 T. 356 (14 S. W. 26); *Railway v. Simpson*, 60 T. 106.

See, however, case of *S. A. & A. P. Ry. v. Morgan*, 58 S. W. 544.

See § 465.

§ 182. Gulf C. & S. F. Ry. Co. v. Golding, 3 W. & W.,
sec. 34.

When a carrier has contracted for the carrying of goods over another line beyond his route, a stipulation that his responsibility is to terminate at the end of his own line will be of no effect.

Contra: Gulf C. & S. F. Ry. Co. v. Baird, 75 T. 256.

See *G. C. & S. F. Ry. Co. v. Allison*, § 175.

§ 183. G. C. & S. F. Ry. Co. v. Henderson, 83 T. 72
(18 S. W. 432).

The district court has power to issue injunctions without regard to the amount in controversy.

Contra: Lazarus v. Swafford, 15 C. A. 367 (39 S. W. 389).

See *Anderson Co. v. Kennedy*, § 5, and note.

The expression quoted from *Railway v. Henderson*, was not necessary to a decision of that case.

§ 184. *Gulf C. & S. F. Ry. Co. v. McGowan*, 73 T. 355
(11 S. W. 336).

In a suit for damages from an overflow upon plaintiff's land, caused by a railway track, it was error to admit evidence against the railway that in reconstructing the track after the overflow the culverts were improved in construction and capacity.

Questioned: *Texas & Pac. Ry. Co. v. Gay*, 88 T. 111 (30 S. W. 543).

This was a suit by a wife for the death of her husband which was caused by the fact that the coupling-pin worked up so as to let the bar connecting the engine and tender slip out, thereby allowing them to separate so that the deceased fell between. The negligence was claimed to consist of the fact that said pin did not have a slot and key in the lower end of it to prevent its working up. At the trial the plaintiff was permitted, over objections, to read from the deposition of one of the witnesses, the following: "We use slots and keys now on all engines." It was held by the supreme court that this was not error because the defendant had already offered testimony to the same fact. But the court says: "We do not wish to be understood as holding that such evidence was not admissible, as each member of the court is strongly inclined to the opinion that the cases excluding such testimony are not founded upon sound reasoning."

NOTE.—*The last case seems to question all the cases holding that subsequent repairs can not be shown.*

§ 185. *Gulf C. & S. F. Ry. Co. v. Stephenson*, 26 S. W.
(C. A.) 236.

Where the defendants' answer presents, in the nature of a cross-bill, or plea in reconviction, a cause of action against the plaintiff, upon which the defendant asks affirmative relief, a simple judgment for the plaintiff is not a final judgment because it does not dispose of the issue raised by the answer.

Contra: *Bemus v. Donnigan*, 18 C. A. 125 (43 S. W. 1052).

Where there has been a plea in reconviction, and testi-

In Watkins v. Junker, 40 S. W. (Sup.) 11, *Justice Brown seems to have been clearly of the opinion that interest should be allowed for stock killed, but that question was not involved in that case. See cases there cited.*

See §§ 238 and 472.

§ 188. *G. C. & S. F. Ry. Co. v. Werchan*, 3 C. A. 478
(23 S. W. 30).

Where the county court has erroneously dismissed an appeal from the justice court, an appeal will lie to the court of appeals, although the amount in controversy is less than \$100.

Contra: *Allen v. Hall*, 60 S. W. (C. A.) 586.

See *Williams v. Sims*, § 534.

§ 189. *Haas v. Kraus*, 75 T. 106 (12 S. W. 394).

Where a deed of trust, given to secure debts, is made by the mortgagor with the intent of placing the property beyond the reach of his creditors, it is void.

Limited: *Haas v. Krause*, 86 T. 689 (27 S. W. 256).

The fraudulent intent of the mortgagor alone will not defeat the instrument. It must be participated in by the accepting creditor in order to have that effect.

NOTE.—See *Simon v. Ash*, § 425, and note.

§ 190. *Hall v. Little*, 11 T. 404.

Where a suit was pending between a surviving partner and the administrator of a deceased partner, the parties agreed to submit their differences to certain arbitrators and agreed further that any person who had a claim against the partnership might have his claim referred to the arbitrators, who were authorized to make awards. On an appeal from the award of the arbitrators, it was *held*, that the judgment was rendered in a case and upon subject-matter properly cognizable in the court and between parties thereto, and as there is no error appearing upon the record the judgment is affirmed.

Contra: *Yarborough v. Legate*, 14 T. 677.

A creditor presented his claim to an administrator, which was by him rejected, whereupon, the parties entered into an agreement for arbitration, stipulating that the award of the arbitrator should be final. *Held*, there is a wide difference between the power of an administrator under the statute and at

common law, and also in the mode of establishing and paying claims against the estate in the two systems. An administrator under the statute has no authority to make such submission, at least when there are other claims against the estate, and especially when the submission is without appeal, for this is not the mode prescribed by law for the establishment of claims against an estate.

§ 191. *Hall v. Pierson*, 1 W. & W., (Civ. Cas.) 1210.

In a suit for a breach of warranty, the plaintiff can recover of his remote warrantor, no more than he (plaintiff) paid to his immediate vendor.

Contra: *Hollingsworth v. Mexia*, 14 C. A. 363 (37 S. W. 455).

The plaintiff, in a suit for a breach of warranty, may recover of his remote warrantor the sum such warrantor received from his immediate grantee for the land, even though plaintiff paid a less sum for it.

§ 192. *Hamburg Bremen Fire Insurance Co. v. Garlington*, 66 T. 103.

Where a building has lost its identity and specific character as a building, the property is totally destroyed within the meaning of the policy.

Limited: *Royal Insurance Co. v. McIntyre*, 90 T. 170 (37 S. W. 1068).

There can be no total loss of a building so long as the remnant of the structure standing is reasonably adapted for use as a basis upon which to restore the building to the condition in which it was before the injury; that whether it is so adapted depends upon the question whether a reasonably prudent owner, uninsured, desiring such a structure as the one in question was before the injury, would in proceeding to restore the building to its original condition, utilize such remnant as such basis.

§ 193. *Hammond v. Garcia*, 25 S. W. 823.

It is a reasonable construction of the statute that errors in the charge should be pointed out in the motion for a new trial, and unless the same is done they will not be noticed on appeal.

unbroken line of decisions in this court is to the effect that the concession must proceed from the governor.

§ 198. *Hardesty v. Fleming*, 57 T. 395.

When illegally assessed taxes are paid under protest after seizure, the money may be recovered back in a suit properly brought against the officer, before he is required to pay it over.

Overruled: *Continental Land & Cattle Co. v. Board*, 80 T. 489 (16 S. W. 312).

A taxpayer can not be compelled to pay illegal taxes if he uses the means to prevent its collection which the law gives him, therefore, if he pays it to the officer who is acting under process, in the form prescribed by law, issued by proper authority, the officer is exempt from liability to the taxpayer, and he must seek his relief from the state, county, or municipality on whose account the tax was collected.

NOTE.—*Taylor v. Robinson*, 72 T. 364; *Davie v. Galveston*, 16 C. A. 13 (41 S. W. 145); *Baker v. Panola Co.*, 30 T. 93; *Gas Co. v. Galveston Co.*, 54 T. 292; *Galveston Co. v. Gas Co.*, 72 T. 516 (10 S. W. 583). *It is held in the case of Wood v. Stinman*, 37 T. 588, that when a tax collector collects taxes without authority of law and pays them into the county treasury, an action can not be maintained against the county for the money so collected.

If this and the principle announced in the overruling case both be correct, then the taxpayer is without any remedy.

See *Galveston Gas Co. v. Galveston Co.*, § 151.

§ 199. *Harle v. Langdon's Heirs*, 60 T. 560.

In this case, Judge Stayton says that where a judgment creditor bids in land at the sale under execution and credits the amount of his bid on the judgment, and where by such sale he gets whatever title the judgment debtor had at the time of the rendition of the judgment, the fact "that this may not have been a good title, nor any title at all, does not furnish sufficient ground for setting aside the satisfaction of the judgment to the extent of his bid."

Contra: *Hollon v. Hale*, 21 C. A. 194 (51 S. W. 900).

—Writ denied.

Where an execution creditor purchases property sold under his execution, and the amount of the bid is credited on the

judgment and the same marked "satisfied" on the execution, he may have such satisfaction set aside on showing that the property belonged to a third person, and the doctrine of *caveat emptor* does not apply although the purchaser is notified at the sale of the claim of such third person.

NOTE.—*The statement by Judge Stayton in Harle v. Langdon was not necessary to a decision of that case because the judgment debtors were not parties to the suit, and the question could not be decided.*

§ 200. *Harle v. Richards*, 78 T. 80.

A widow and a son, after the husband and father's death, executed a mortgage upon their interests in the residence and the business homestead of the family. The business homestead was abandoned. *Held*, in suit to foreclose the mortgage that the interests in the residence homestead of the widow and son were subject to sale under foreclosure, subject to the right of the widow and minor children to occupy it. During such occupancy the purchaser could not have partition.

Questioned: *Lee v. British & American Mortg. Co.*, 61 S. W. 134.

The provision of constitution, article 16, section 52, that in a controversy between the heirs and the surviving husband or wife the homestead can not be partitioned during the life of the survivor, has no application when a third party asserts rights in the homestead as a purchaser under a valid deed of trust executed by the husband after his wife's death.

NOTE.—*Hall v. Fields*, 81 T. 558 (17 S. W. 82); *Lacy v. Rollins*, 74 T. 566 (12 S. W. 314); *Ford v. Sims*, 57 S. W. 20; *Adair v. Hare*, 73 T. 275 (11 S. W. 320); *Smith v. Von Hutton*, 75 T. 626 (13 S. W. 18); *Zuernemann v. Von Rosenberg*, 76 T. 525 (13 S. W. 485).

The case of Harle v. Richards was decided by the supreme court, and the opinion in the questioning case was rendered by the court of appeals, and ordinarily, this would not affect the case, but by examination of the decision of Ford v. Sims, rendered by the supreme court, it will be seen that the principle in the questioning case is announced and is in conflict with the principle announced in the questioned case.

§ 201. *Harragan v. Quay*, 27 S. W. 897.

A creditor of an insolvent corporation, obtaining a lien

decide whether he could perform the service without injury to himself."

See H. & T. C. Ry. Co. v. Hicks, 59 S. W. (C. A.) 1025, citing and approving the *Duvall* case. The *Hicks* case undoubtedly carries the doctrine to the border line in holding that an inexperienced hand, who is ordered to jump off a moving train and is hurt, may recover. It would seem that anyone, whether experienced or not, could realize the danger of jumping off a moving train, but it has frequently been held in this state that it is not negligence, as a matter of law, to do so. The Supreme Court of the United States has approved a recovery under similar facts to those in the *Hicks* case.

See Railway v. Wagley, § 186.

§ 205. *Hart v. Blum*, 76 T. 113 (13 S. W. 181).

Where goods are wrongfully attached and the owner becomes the purchaser at the attachment sale, he is entitled to recover the value of the goods with interest from the date of the seizure, and this right is not limited or affected by the fact that he purchased the goods at the sale.

Overruled: Field v. Munster, 32 S. W. (C. A.) 417; *Id.*, 89 T. 102 (33 S. W. 852).

See Schooler v. Hutchins, § 414.

§ 206. *Hart v. Gibbons*, 14 T. 213.

It is the uniform doctrine of this court that the state does not surrender the dominion and control of the public domain until final and complete title has been issued.

Contra: Snider v. Methun, 60 T. 487.

See Smith v. Taylor, § 431.

§ 207. *Hart v. Wallace*, 49 S. W. (C. A.) 675.

When a sane man, knowingly and without constraint, delivers to another for a valuable consideration, his obligation in writing for the doing or refraining from doing any certain thing, he can not be heard to say afterwards that he was deceived, and by reason thereof he did not know the purport of such instrument.

(This case was a suit on a promissory note and the defendant alleged that he could barely sign his name and could not, without great difficulty and much assistance, read the writing of other persons, and that he was led to believe, and did believe,

from the plaintiff's statements and representations, that he was signing a receipt for cattle.)

Contra: Conn v. Hogan, 93 T. 334 (55 S. W. 325).

Where a party has been induced by the representations of the other party to a contract to sign an instrument which he is led to believe from such representations, expresses the real contract as agreed on, but in fact it does not, he may have the contract reformed to express the real contract, although he may have been negligent in not reading the instrument he signed.

Chief Justice Gaines, in disposing of this question, says: "The defendant in error claims that Mrs. Conn was guilty of negligence in signing the deed of trust without reading it and, therefore, the court ought not to reform the instrument according to her testimony. If the failure to read the instrument was unexplained, and there was no reasonable excuse for it, this proposition would be correct, but when the party is misled by the fraudulent representation of the other party, and caused, by his confidence in such person and his representations, to sign the instrument without reading it, this does not constitute such negligence as will deprive the maker of the instrument of equitable relief from the consequences of the fraudulent representations."

NOTE.—*Chatham v. Jones*, 69 T. 744 (7 S. W. 600); *American Freehold Land Mortgage Co. v. Pace*, 56 S. W. 384.

§ 208. *Hartley v. Frosh*, 6 T. 208.

Where the wife joins the husband in the execution of a deed of trust upon her separate estate, to secure the payment of a debt due by the husband, the privy acknowledgment of the wife being in due form, it is held in order to impeach its veracity, it is not sufficient to allege that there was no privy examination, that the contents were not made known to her, for the certificate is conclusive in the absence of an allegation of fraud or imposition, as for instance: that there was a fraudulent combination between the notary and the parties interested.

Contra: *Waltee v. Weaver*, 57 T. 569.

See *Freiberg v. DeLamar*, § 146.

§ 209. *Harwood v. Wylie*, 70 T. 538 (7 S. W. 789).

In this case, application was made for letters fifteen years after the death of the party, and the court in declaring the

If interest be properly an element of damages in any case, then it is so as a matter of law and the question should not be left to the jury.

See *Fowler v. Davenport*, § 138, and note; *Close v. Fields*, § 77.

§ 213. *Heidenheimer v. Franklin*, 1 W. & W. (Civ. Cas. S.) 840.

A third person can not maintain an action on a contract to which he is not a party, although it may have been for his benefit.

Contra: *Spann v. Cochran*, 63 T. 240.

Where one purchases property and assumes the payment of a note due by his vendor to a third party, the holder of the note may maintain an action against the purchaser on his assumption of the same.

NOTE.—*Baptist Book Concern v. Carswell*, 46 S. W. (C. A.) 858. *The rule laid down in Spann v. Cochran has been followed by a long line of decisions.*

§ 214. *Heintz v. O'Donnell*, 42 S. W. 797.

Though a recorded deed has been defectively acknowledged, a certified copy of it may be introduced in evidence as a circumstance to show the existence of such a deed.

Contra: *Heintz v. Thayer*, 92 T. 658 (50 S. W. 929; 51 S. W. 640).

See *Ammons v. Dwyer*, § 4.

§ 215. *Hemming v. Zimmerschitte*, 4 T. 159.

A writing, purporting to be an answer, but not signed by either the defendant or his attorney, can not properly be classed among the pleadings of the cause.

Contra: *Fidelity & Casualty Co. of N. Y. v. Lopatka*, 60 S. W. (C. A.) 268.

The signing of an answer is a formal requisite and the court can not treat it as a nullity and render judgment by default. The proper practice is to except to it, or move to strike it out before proceeding to take judgment by default for want of an answer.

NOTE.—See *Boren v. Billington*, 82 T. 138 (18 S. W. 101).

216. Hicks v. Gray, 25 T. 82.

A motion against an officer for failing to levy an execution can be made only by the plaintiffs in the execution. An assignee could not make such a motion under Oldham & W. Dig., art. 892.

Contra: Ranken v. Jones, 53 S. W. 584.

Under the present statute (art. 2387, Rev. Stat.), a motion against an officer for neglecting to return an execution may be made by the party entitled to receive the money, and, therefore, an assignee of the judgment may make such a motion.

§ 217. Hildebrant v. Brewer, 5 T. 566.

An assignment of error that "the court erred in overruling defendant's exceptions to the petition" is good.

Overruled: Clarendon Land & C. Co. v. McClelland Bros. 86 T. 189 (23 S. W. 533).

Hildebrant v. Brewer, holding the assignment of error that "the court erred in overruling defendant's exceptions to the petition" good, recognizes a too liberal rule.

§ 218. Hill v. Cunningham, 25 T. 25.

Where an attorney contracts with the client for a contingent fee to depend upon the result of the suit, if the client compromise the suit without consulting the attorney and without his consent, then the attorney will be entitled to recover the whole amount of the fee in like manner as if the contingency had transpired upon which the fee was made to depend.

Limited: Merchants Natl. Bank v. Eustis, 8 C. A. 357 (28 S. W. 227).

The rule announced in Hill v. Cunningham should only be given application to cases where the evidence fails to show what would have been the result of the litigation had the compromise not been made. It would be unreasonable to hold that an attorney should receive compensation on the basis of a successful termination of the suit, when the evidence affirmatively shows that such would not have been the result.

§ 219. Hill v. Dons, 37 S. W. (C. A.) 638.

For the purpose of impeachment, a witness can not be asked, on cross-examination, if he is under indictment for forgery.

This, however, would be the privilege of the witness and would not render the question improper.

The court of criminal appeals has allowed much more latitude in this respect than have some of the courts of civil appeals, and have held it admissible to ask a witness if he is under indictment for perjury (Bruce v. State, 44 S. W. 582); or if he has been convicted of sodomy (McCray v. State, 44 S. W. 170), and where the fact of conviction is offered only as affecting the witness's credibility he may be asked about it, but if intended for the purpose of rendering the witness incompetent the proof must be made by the record (McNeal v. State, 43 S. W. 792). See also Carroll v. State, 24 S. W. 100.

Linz v. Skinner, 32 S. W. (C. A.) 915, holds it proper to ask the witness if he had not been indicted for embezzlement and perjury, but says an indictment ten years before might be objected to as too remote. See also Heath v. White, 39 S. W. 123; Railway Co. v. White, 56 S. W. 207.

§ 220. *Hill v. Dons, 37 S. W. (C. A.) 638.*

Where an auditor's report has been excepted to, it is not admissible as evidence as to the items so excepted to.

Contra: Eagle Mfg. Co. v. Hanaway, 90 T. 581 (40 S. W. 13).

Under Revised Statutes 1895, article 1496, an auditor's report, though properly excepted to, is prima facie proof of the facts stated in it, and, if not contradicted by evidence offered by either party, will support a judgment in accordance therewith.

NOTE.—Moore v. Ass'n, 9 C. A. 404 (28 S. W. 1033); Kempner v. Galveston Co., 76 T. 451 (13 S. W. 460); Dwyer v. Kalteyer, 68 T. 559 (5 S. W. 75); Whitehead v. Perie, 15 T. 7.

See § 402.

§ 221. *Hill v. Kimball, 76 T. 210 (13 S. W. 59).*

Construing the meaning of the word "trespass," as used in Revised Statutes, article 1194, subdivision 9, at page 216, the supreme court says: "In this last sense the word (trespass) would include injuries to persons or property which are the result of the negligence of the wrongdoer, and it seems to us more in consonance with the purpose and spirit of the exception to hold that it was in this sense that it was intended the

word should be understood."

Qualified: Ricker Lee & Co. v. Shoemaker, 81 T. 22 (16 S. W. 645).

In this case the plaintiff (Shoemaker) claimed to have been injured through the negligence of the foreman of defendant in failing to fasten a guy rope at the proper time. It was held that this was not a "trespass" within the meaning of the statute, but that the word "trespass" as there used, "was intended to embrace only actions for such injuries as result from wrongful acts willfully or negligently committed, and not those which results from a mere omission to do a duty."

Hill v. Kimball is referred to and it is admitted there are expressions in this opinion which would tend to give the statute a wider scope. "But," says Justice Gaines, "when that case was under consideration the distinction we now draw did not present itself to our minds."

NOTE.—In *Wettermark v. Campbell*, 93 T. 517 (56 S. W. 331), where a party wrongfully caused an execution to be issued in Dallas county and his attorney went to Nacogdoches and caused it to be levied there, it was held that this was a "trespass" within the statute for which suit could be brought in Nacogdoches county.

In *Connor v. Saunders*, 9 C. A. 57 (29 S. W. 1140), the plaintiff, Saunders, alleged that while he and defendant's foreman, Brown were engaged in lowering a pump pipe into a well, Brown loosened a chain connected with the pump pipe which allowed it to descend rapidly and caused the crank of the windlass to revolve rapidly and strike plaintiff and injure him. It was also alleged that plaintiff was inexperienced and that Brown knew the danger of the machinery "and knew that to loosen the chain, as was done by him, was dangerous to the plaintiff and would likely result in his death or serious bodily harm," and further, "that in the course of his employment, Brown deliberately, willfully and purposely loosened said chain, * * * regardless and indifferent to the danger it placed plaintiff in." The plea of privilege was submitted to the jury with instructions to find for the plaintiff on the plea, if they found from the evidence that Brown (the foreman) not acting as an ordinarily prudent man would have acted, "did an act that he, the said Brown knew to be dangerous to the safety of the plaintiff, etc." The court of civil appeals affirmed a judgment for the plaintiff, but says the charge of the trial court required the

and compel him to surrender funds of the wards where the debts have been paid.

It is recognized, however, that this might depend on the provisions of the will.

§ 227. *Holliman v. Peebles*, 1 T. 673.

If the capacity of aliens to hold lands in the Republic of Mexico ever existed under the laws of Spain, it was extinguished by the laws of March, 1828.

Overruled: *Baker v. Westcott*, 73 T. 129 (11 S. W. 157).

As between the parties to it, a conveyance to an alien during the days of the republic was good, but such conveyance was subject to be escheated by a proceeding in the nature of office found at the instance of the government.

NOTE.—*The following cases are in accord with the overruling case: Spear v. Andrews*, 48 T. 567; *Osterman v. Baldwin*, 6 Wallace 116. In this case the United States Supreme Court also held, that, naturalization has a retroactive effect, and that when Texas was admitted into the Union, defendant's title became indefeasible.

Williams v. Bennet, 1 C. A. 498 (20 S. W. 856); *Phillips v. Moore*, 100 U. S. 208; *DeMerle v. Matthews*, 26 Cal. 477; *Hammikin v. Clayton*, 2 Wood, 337; *Barrett v. Kelley*, 31 T. 476.

§ 228. *Holloman v. Rogers*, 6 T. 91.

Holloman as principal, and Isaac C. Neal and James H. Grace as sureties, executed two notes to Elijah Frank. Grace, one of the sureties, paid the notes to Holloman and assigned them to Rogers, who brought suit thereon against his principal and co-surety. *Held*: Grace would have the right of action against Holloman for the amount of money paid but not founded on the notes because they had been paid off and the debt secured by them extinguished, and would be barred by the statute of limitation of two years.

Contra: *Sublett v. McKinney*, 19 T. 439.

Philip A. Sublett drew a draft on McKinney and Williams in favor of General Sam Houston for \$500. On presentation of the draft McKinney and Williams paid the same and thereupon instituted suit against Sublett for the amount of the draft. Sublett's defense was that plaintiff's cause of action was on an implied contract and barred in two years.

Held: That the plaintiff's action was based upon the contract in writing and not barred in two years.

NOTE.—*The case of Sublett v. McKinney was overruled by Faires v. Cockrell, and Holloman v. Rogers reinstated.*

See § 453.

§ 229. *Holliman v. Smith*, 39 T. 362.

The husband is the head of the family; he, not the wife, chooses and establishes the homestead, and when he establishes it, his homestead becomes her homestead whether she be willing or unwilling; when he sees fit to change the homestead and dedicates another *eo instanti*, the new homestead becomes that of the wife and the family also.

Contra: *Cox v. Harvey*, 1 U. C. 268.

We can not yield our assent to the proposition that without her consent signified in some mode, to the abandonment of the homestead, the husband has the power to deprive the wife of its benefits, and subject it to his debts and uses, by simply causing her to remove from it. The constitution prescribes how the homestead shall be alienated. This would be to put in its place a new mode of conveyance and authorize alienation by abandonment. If it can not be conveyed by deed without her privy examination in some form, we confess our inability to understand why in effect, it can be alienated by abandonment without her consent.

NOTE.—*The case of Holliman v. Smith is also held to be dicta in the case of Gibbs v. Mayes*, 2 U. C. 221.

Smith v. Uzzell, 56 T. 318; *Newman v. Farquhar*, 60 T. 644; *Cullers v. James*, 66 T. 497 (1 S. W. 314); *Portwood v. Newberry*, 79 T. 340 (15 S. W. 270); *Reece v. Renfro*, 68 T. 192 (4 S. W. 545); *Gouhenant v. Cockrill*, 20 T. 97; *Woolfolk v. Risketts*, 48 T. 37.

The principle announced in the cases in conflict, have no application to the abandonment of the business homestead, which may be abandoned by the husband without the consent of the wife. *Wynne v. Hudson*, 66 T. 10; *Inge v. Cain*, 65 T. 81; *Medlenka v. Downing*, 59 T. 32; *Cross v. Everts*, 28 T. 533.

See *Marler v. Handy*, § 324.

§ 230. *Hollis v. Francois*, 5 T. 201.

A privy examination of the wife before a magistrate, is

required by the statute in all conveyances of any of the effects of the wife, even as to the most insignificant articles among her movables.

Overruled: Ballard v. Carmichael, 83 T. 355 (18 S. W. 734).

The statute of 1846 did provide that a writing purporting to convey the wife's separate estate "shall be invalid, unless accompanied by a certificate of her privy acknowledgment," but it did not declare that such a conveyance of her personal estate should be in writing. But did declare that a writing was necessary to convey her lands or slaves.

NOTE.—The following cases are in accord with the overruled case: Taylor v. Hall, 20 T. 211; Tucker v. Carr, 39 T. 98, while the following are with the overruling cases: McDaniels v. Garrett, 11 C. A. 57 (31 S. W. 72); Ikard v. Thompson, 81 T. 285 (16 S. W. 1019); Gregory v. Van Vleck, 21 T. 40; Radway v. Durrett, 57 T. 51; Groesbeck v. Bodmen, 73 T. 287 (11 S. W. 322). The question at issue is now of little importance, for the law of 1846 was changed by the Revised Statutes, which only requires the conveyance of the wife's lands to be in writing.

§ 231. Home Ins. Co. v. Smith, 29 S. W. 264.

Under the provisions of an insurance policy that it shall be void if the subject of insurance be buildings upon ground not owned by the insured in fee simple, and the policy covered both the building and the goods therein contained. *Held:* That upon proof that the building was upon leased land, the plaintiff was not entitled to recover.

Contra: Bills v. Hibernia Ins. Co., 87 T. 547 (29 S. W. 1063).

Where an insurance policy was issued upon a building and machinery contained in the building, and the policy contained a clause that the same should be void if the subject of insurance be on ground not owned by the insured in fee simple. *Held:* That the plaintiff was entitled to recover for the machinery, notwithstanding it was proven upon the trial that the insured only owned a leasehold interest in the land.

NOTE.—Sullivan v. Hartford Ins. Co., 89 T. 667 (36 S. W. 73); Insurance Co. v. Ward, 7 C. A. 13 (26 S. W. 764).

§ 232. Hooper v. Hall, 35 T. 82.

In order for plaintiff to recover in an action of trespass to try any title, even as against a naked possessor, he must show that he is the absolute owner of the land in controversy not only as against the defendant, but as against all other persons.

Contra: Parker v. Ft. Worth & Denver City Ry. Co., 71 T. 132.

In an action of trespass to try title, prior possession alone is sufficient evidence in behalf of plaintiff, to entitle him to recover against a mere trespasser.

NOTE.—In the first case, the question of the plaintiff's possession was not an issue in the cause and it is possible that the court rendering that decision did not intend to hold that prior possession would not enable the plaintiff to recover against a trespasser in an action of trespass to try title, nevertheless, the rule is so broadly stated that it will admit of no exception and is well calculated to mislead.

The following authorities are in accord with the last case: *Alexander v. Gilliam*, 39 T. 228; *Kolb v. Bankhead*, 18 T. 229; *House v. Reavis*, 35 S. W. 1063; *Caplen v. Drew*, 54 T. 493; *Buren v. Strong*, 53 T. 379; *Keys v. Mason*, 44 T. 140.

§ 233. Horn v. Arnold, 52 T. 161.

The widow and children, to whom a homestead allowance was made, took an estate in the homestead set apart to them, free from any claim of inheritance by other children or heirs not beneficiaries of or entitled to share in the allowance.

Contra: *Zwernemann v. Von Rosenberg*, 76 T. 522 (18 S. W. 485).

Article 2002, Revised Statutes, in so far as it attempts to make the homestead of an insolvent to descend in a manner different from other real estate, is prohibited by the constitution, and is void.

NOTE.—Judge Stayton delivered a dissenting opinion in the overruling case, nevertheless, the majority opinion has been followed in the following cases: *Stevenson v. Marsallis*, 11 C. A. 162 (33 S. W. 386); *West v. West*, 9 C. A. 475 (29 S. W. 242); *Cameron v. Morris*, 83 T. 17 (18 S. W. 422); *Lacy v. Lockett*, 82 T. 194 (17 S. W. 116).

Harrison v. Columbus, 44 T. 418.

Injuries caused to a prisoner by reason of the neglect of chief of police to disarm a fellow-prisoner: Stinnett v. City of Sherman, 43 S. W. 847.

Destruction of building by hook and ladder company to prevent spread of fire: Keller v. Corpus Christi, 50 T. 629.

Damages arising from the obstruction of streets by transporting building material: Taylor v. Dunn, 80 T. 665 (16 S. W. 732).

Damages for injury done by policeman in shooting an unmuzzled dog: Whitfield v. Paris, 84 T. 432 (19 S. W. 566).

Damages for arrest by policeman without warrant: City of Galveston v. Posnainsky, 62 T. 132; *Rusher v. Dallas*, 83 T. 152 (18 S. W. 333).

Damages to engineer of a fire engine, caused by gross negligence and incompetency of the driver: Shanework v. Ft. Worth, 11 C. A. 271 (36 S. W. 918).

Injury inflicted by a cow, recklessly driven by an officer through populous part of city: Given v. Paris, 5 C. A. 707 (24 S. W. 974).

§ 235. *House v. Talbot*, 51 T. 462.

A failure to return a land certificate to the general land office within twelve months from the date of the survey, will not operate as a forfeiture of the location.

Contra: Von Rosenberg v. Cuellar, 80 T. 249 (16 S. W. 58).

The failure to return a land certificate to the general land office, within twelve months after the date of the survey, is fatal to any right under the survey, which right is not protected, or failure to return, excused by attempting to use the certificate elsewhere, if it were not legal to do so, whereby they were not returned as they should have been.

NOTE.—At the time of the location of the certificate in the overruled case, there was a statute requiring that the field notes should be returned to the land office within twelve months from the date of the location, but no time was prescribed for the return of the land certificate. At the time of the decision in the overruling case, the act had been amended, and the certificate was required to be returned with the field notes within twelve months from the date of the location, hence, the change of the statute accounts for the conflict between the decisions.

§ 236. *Houston E. W. & T. Ry. Co. v. Hartnett*, 48 S. W. (C. A.) 773.

It is improper to charge a jury that the operatives of trains, after discovering the peril of a person on the track, are required "to exercise all reasonable care in their power to prevent injury." This imposes too high a degree of care, and they are only required to exercise such care as ordinarily prudent persons would exercise under like circumstances.

Contra: *T. & P. Ry. Co. v. Breadow*, 90 T. 27 (36 S. W. 410).

When the operatives of a train discover the peril of a person, a new duty devolves upon them to use every means then within their power, consistent with the safety of the engine, to avoid running him down.

NOTE.—*The rule in the Breadow case has been frequently asserted by the supreme court and courts of civil appeals. See T. & P. Ry. Co. v. Staggs*, 90 T. 461 (39 S. W. 295); *Railway v. Sein*, 33 S. W. 558; *Railway v. Sanchez*, 88 T. 120 (30 S. W. 551).

§ 237. *H. & G. N. Ry. Co. v. Kuechler*, 36 T. 382.

The act of January 30, 1854 (Paschal's Digest, art. 4945), provided that "Any railroad company chartered by the legislature of this state, heretofore, or hereafter constructing within the limits of Texas, a section of twenty-five miles or more of railroad, shall be entitled to receive from the state, sixteen sections of land for every mile of road so constructed and put in running order." *Held*, that this enactment was available to any railroad chartered at any time while the act was in force.

Overruled: *Quinlan v. H. & T. C. Ry. Co.*, 89 T. 356 (34 S. W. 738).

The act of January 30, 1854, granting to railroads sixteen sections for every mile of road constructed, applied only to companies existing at the date of its passage.

§ 238. *Houston & T. C. Ry. Co. v. Jones*, 16 C. A. 179. (40 S. W. 745).

Interest should be allowed on the value of stock killed from the date of the killing.

Contra: *St. Louis & S. W. Ry. Co. of Texas v. Chambliss*,

him to defeat a recovery by the grantee; and if the grantor can not do so, it logically follows, under the decisions, that his legal representatives can not.

§ 245. *Hunton v. Nichols*, 55 T. 217.

The absence of a defendant from the state, or the absence of any vendor through whom he claims, can, in trespass to try title, when he invokes the statute of limitation for his protection, have no effect upon his rights, if, during the period of absence, possession was held by his tenant or agent.

Limited: *Huff v. Crawford*, 88 T. 373 (30 S. W. 546, 31 S. W. 614).

Article 3216, Revised Statutes, prescribing that the temporary absence of the defendant from the state shall not be counted as part of the time limited, applies to actions for land as well as personal actions; and where a resident of the state holds land by an agent or tenant during his absence from the state, such time will not be counted as part of the time to complete title by limitation in his favor. However, if such defendant was a non-resident of the state at the time possession was taken by his tenant or agent, the statute would run in his favor—in other words, the statute applies to *residents of the state*, and limitation does not run in their favor during their absence, but it has no application to non-residents.

Hunton v. Nichols is referred to and held not binding as an authority, because the question was not necessary to a decision of that case.

NOTE.—*Morgan v. Baker*, 40 S. W. (C. A.) 27; *Hendricks v. Huffmeyer*, 27 S. W. 777.

See § 415.

§ 246. *Hutchinson v. Mitchell*, 39 T. 487.

The husband may by deed declare an express trust in favor of his wife, giving her the exclusive use and enjoyment of all the rents and profits of the trust estate, provided there be no fraud in the transaction. The rents and profits of such trust estate being the separate property of the wife, are not subject to the debts contracted by the husband after the creation of the trust estate.

Contra: *Green v. Ferguson*, 62 T. 525.

While the husband may convey property to his wife to reimburse her for appropriating her separate estate either to

himself or for community purposes, or may make to her a gift of his interest in the community property, yet he can not make a conveyance to his wife of his community interest, which is subject to the payment of community debts, so as to withdraw it from the reach of creditors. The gift passes to her his community interest, but he can not so contract that the future gains and profits thereof shall be exempt from the payment of community debts existing or which may be afterwards contracted.

NOTE.—*Wallace v. Finberg*, 46 T. 44; *Cox v. Miller*, 54 T. 25; *Hayden v. McMillan*, 4 C. A. 479 (23 S. W. 430); *Brown v. Perrill*, 77 T. 204 (13 S. W. 975); *Swearengen v. Reed*, 2 C. A. 364 (21 S. W. 383); *Hamilton Shoe Co. v. Whitaker*, 4 C. A. 380 (23 S. W. 420); *Young v. Willis*, 63 T. 388; *Parker v. Nolan*, 37 T. 85; *Carlisle v. Sommer*, 61 T. 124; *Bradin v. Gose*, 57 T. 37; *Carr v. Tucker*, 42 T. 330.

• § 246a. *Iken v. Olenick*, 42 T. 185.

Under the constitution of 1869, unless the lot or lots are contiguous, they are not included in the exemption of homesteads from forced sale.

Contra: *Anderson v. Sessions*, 93 T. 279.

The use of a lot for the purpose of raising garden vegetables, berries and fruits for the family table, is one of the uses to which home lots are devoted, and whether it be contiguous or not, to the residence, the writers of our constitution intended to exempt it from forced sale. It is a part of the residence homestead.

NOTE.—*Arto v. Maydole*, 54 T. 247; *Medlenka v. Downing*, 59 T. 40; *Brooks v. Chatham*, 57 T. 33; *Jacobs v. Hawkins*, 63 T. 4; *Axer v. Bassett*, 63 T. 548; *Waggener v. Haskell*, 35 S. W. 1.

The decision of Anderson v. Sessions is based on the change made in the constitution in 1876, after the decision of Iken v. Olenick.

§ 247. *International B. & L. Ass'n v. Abbott*, 85 T. 220 (20 S. W. 118).

The contract in this case was held not to be usurious, but through a mistake in the calculation.

Overruled: *Abbott v. International B. & L. Assn.*, 86 T. 475 (25 S. W. 620).

A mistake was made in the calculation on the former appeal in this case, by which the annual interest was omitted from the estimate of the sum paid for the use of the money, and it thus appeared to be less than twelve per cent on the money borrowed. The court, under this error, held the contract not to be usurious, but the mistake is evident to any one reading the opinion.

§ 248. *International B. & L. Ass'n v. Fortassian*, 22 S. W. (C. A.) 496.

Where a debtor and creditor enter into a new contract, supported by a valuable consideration, in which the debtor agrees to pay the usurious debt according to its original terms, the latter is deprived of the right to claim that the contract was usurious and to have his previous payments credited upon the principal.

Contra: *Sturgis Natl. Bank v. Smith*, 87 T. 649 (30 S. W. 898).

In this opinion, Chief Justice Gaines refers to *International B. & L. Assn. v. Biering*, 86 T. 476 (25 S. W. 622, 26 S. W. 39), as having established a contrary rule to that expressed in *Assn. v. Fortassian*.

NOTE.—*The decision referred to, however, held that the consideration on which the court of civil appeals based its opinion was not in fact a valuable consideration.*

Judge Finley, in Sturgis Nat. Bank v. Smith, 9 C. A. 540 (30 S. W. 678), *seems to have been of the opinion that if there was in fact a valuable consideration "other than the principal and interest embraced in the old note," a recovery would be allowed.*

§ 249. *I. & G. N. Ry. Co. v. Caldwell*, 3 W. & W., sec. 439.

Measure of damage, for livestock killed or injured in transportation, may be fixed by stipulation in contract of shipment, even where the damage claimed is caused by the negligence of the carrier.

Overruled: *St. Louis A. & T. Ry. Co. v. Robbins*, 4 W. & W., sec. 43.

A stipulation in a bill of lading, limiting the liability of the carrier, is not valid and binding on the shipper, and does not control the measure of his damage, but he may recover the damage to which he may show himself entitled under the

measure of damage fixed by law.

NOTE.—*S. P. Ry. v. Maddox*, 75 T. 300 (12 S. W. 815); *Railway v. Harris*, 67 T. 169 (2 S. W. 574); *Railway v. Ivy*, 71 T. 414 (9 S. W. 346); *Railway v. McGown*, 65 T. 643.

§ 250. *I. & G. N. Ry. Co. v. Hall*, 78 T. 667 (15 S. W. 108).

It is the duty of a railroad company to exercise reasonable care and foresight in establishing regulations for the protection of its employees, and should it appear that the railway company failed to provide the regulations and, as a consequence, its employees were left unprotected and exposed to danger, still if an employee, should know this, or by the use of ordinary care might have known it, and continue in the employ of the company, he can not recover.

Limited: *T. & P. Ry. Co. v. Eberhardt*, 91 T. 321 (43 S. W. 510).

The servant is not under the duty of exercising care to ascertain if his employer has established proper rules, but has a right to assume that he has done so, and instructions holding him to an assumption of the risk arising from the business, as done in accordance with the rules which he might have known by the exercise of ordinary care, is erroneous.

NOTE.—*Railway v. Lehmberg*, 75 T. 67 (12 S. W. 838); *Bonnet v. Railway*, 89 T. 76 (33 S. W. 334); *Railway Co. v. Compston*, 15 C. A. 493 (40 S. W. 546); *I. & G. N. Ry. Co. v. Hinzie*, 82 T. 623 (18 S. W. 681).

See *Rogers v. Railway*, § 404 and § 340.

§ 251. *Ireland v. Gordon*, 39 T. 253.

Holding Act April 24, 1871, with references to levy of school tax, valid.

Overruled: *Willis v. Owen*, 43 T. 42.

Here same act is held invalid.

§ 252. *Island City Savings Bank v. Dowlearn*, 59 S. W. 308.

When the original purchaser of school land, under the act of 1891, is in default by reason of failure to tender the interest and penalty as required by law, the land is thereupon open for resale without the necessity of the commissioner of the general land office indorsing upon the obligation "land forfeited."

higher evidence of right or estate in character different from that held by her.

NOTE.—There is not a question in Texas jurisprudence that has given rise to more litigation, and caused more conflict of judicial opinion, than the one at issue between the conflicting cases above mentioned. It was the evident purpose of the statute (article 2968) to vest in the community the legal title regardless of the spouse in whose name the deed was taken, at least so far as the right of the husband and wife and their heirs were concerned, but when the rights of creditors and purchasers were involved, the purpose and intention of the statute is not so plain, for, to hold that community property, when the deed is taken in the name of the husband, vests in him the legal title, is equivalent to saying that a purchaser from the husband will be protected unless the heirs of the wife can establish that the purchaser had knowledge of the marriage, or that no community debts existed, which authorized the sale. Whereas, to hold that the legal title was in the community, then it must follow that on the death of the wife, the legal title to one-half descends to her heirs, and a purchaser from the husband acquires only his one-half, unless he could establish that the sale was made to pay community debts. In the cases of *Duncan v. Rawls*, 16 T. 501; *Parker v. Parker*, 10 T. 96; *Robinson v. McDonald*, 11 T. 390; *Jones v. Jones*, 15 T. 143; *Wilkinson v. Wilkinson*, 20 T. 244; *Thompson v. Cragg*, 24 T. 600; *McGee v. Rice*, 37 T. 501; *Primm v. Barton*, 18 T. 206; *Monroe v. Leigh*, 15 T. 519, it was held that where community property was acquired by deed taken in the name of the husband, the heirs of the wife were entitled to recover all such property disposed of by the husband, after his wife's death, in the absence of some equitable defense interposed by the purchaser. These decisions were followed by *Burleson v. Burleson*, 28 T. 418, but in the case of *Johnson v. Harrison*, 48 T. 257, the case of *Burleson v. Burleson* is criticised, and it is there said: "The interest of the survivor and of the children is the same, each one-half of the remainder. The legal title is in the survivor and the children. The child who sues for his share is not asserting an equity, but a legal title under the statute."

In the case of *Yancy v. Batts*, 48 T. 46, Judge Moore delivered an able and exhaustive dissenting opinion in which he criticises the majority opinion in that case as well as the one

in *Johnson v. Harrison*, and holds that where the deed to community property is taken in the name of the husband, the legal title is in the husband and not in the community, and the heirs of the deceased wife take by inheritance only an equitable estate, and, therefore, an innocent purchaser for value, from the surviving husband, is protected not only for want of notice of the heirs' title, but for want of registration of his ancestors' title. The case of *Hill v. Moore*, 62 T. 610, held in effect with the dissenting opinion of Judge Moore, but did not refer to it, or to the case of *Johnson v. Harrison*. In the case of *Edwards v. Brown*, 68 T. 331, it is said that expressions in *Johnson v. Harrison*, to the effect that the legal title is in the husband, are obiter dicta. The court for the third time changes its views and in the case of *Patty v. Middleton*, 82 T. 590, held with the dissenting opinion of Judge Moore. Again in the case of *Japhat v. Pool*, 84 T. 91, when the deed to community property was taken in the name of the wife, and was sold by the husband after the wife's death, the court was forced to abandon the distinction as to the title as announced in *Patty v. Middleton*, for they in effect held in that case the legal title is not in the wife but in the community, by saying: "It has become, not only a rule of decision but a settled rule of property in this State, that all property acquired by the husband and wife during marriage, whether the deed be in the name of the one or the other, upon a consideration deemed valuable in law, is presumed to be community property which the husband may dispose of, and a purchaser under the husband may rely upon this presumption; and the fact that the deed to the property is in the name of the wife alone will not of itself give him notice of her separate claim or right in the property apart from the community, nor even put him upon inquiry."

Notwithstanding the conflict, it can now be regarded as settled that the legal title, as distinguished from the equitable, is in the marital partner to whom the deed is made, and on the death of one, his or her heirs inherit the same character of title, and that a purchaser for value from the marital partner, who has the legal title or the apparent right of disposition, without notice of the rights of the other partner, will be protected.

See *Garner v. Thompson*, § 158, and *Veramenda v. Hutchins*, § 496.

had no jurisdiction to decree the specific performance of a contract for the sale of land, and a deed made thereunder is void.

NOTE.—*Shannon v. Taylor*, 16 T. 419; *Bohannon v. Hans*, 26 T. 445; *Box v. Lawrence*, 14 T. 545; *Kegans v. Allcorn*, 9 T. 25; *Jones v. Taylor*, 7 T. 244; *Peters v. Phillips*, 19 T. 70; *Booth v. Todd*, 8 T. 137; *Hooper v. Hall*, 30 T. 154; *Menefee v. Hamilton*, 32 T. 514; *Todd v. Caldwell*, 10 T. 241; *Ottenhouse v. Burleson*, 11 T. 88; *Elliott v. Whitaker*, 30 T. 416; *Robinson v. McDonald*, 11 T. 389; *Norris v. Duncan*, 21 T. 594.

§ 262. *Karner v. Stamp*, 12 C. A. 460 (34 S. W. 656).

Where the plaintiff has closed his case, and the defendant offers no testimony, it is within the discretion of the trial court to permit the plaintiff to offer additional testimony to strengthen his case.

Contra: *Ayres v. Harris*, 77 T. 120 (13 S. W. 768).

Under Revised Statutes 1879, article 1279, subdivision 9, where the defendant has offered any testimony disputing the plaintiff's testimony on any issue, the plaintiff has the right, in closing, to offer additional testimony on that issue, although it is of the same character as that first introduced by him, and a refusal to permit him to do so is reversible error.

But when the defendant has offered no testimony on an issue, there is nothing for the plaintiff to rebut, and evidence as to such issue is merely cumulative and as such it is not only within the discretion of the trial court to refuse it, *but it is its duty to do so.*

NOTE.—*In many states the rule is that the plaintiff must offer all of his testimony in the first instance, but in Mahon v. Wolff*, 61 T. 489, *the rule was adopted in this state that the plaintiff "is only required to make a prima facie case in the opening, and may reserve confirmatory proof in support of the very points made in the opening till he finds on what points his opening case is attacked, and then fortify it upon those points."* But it would seem that he should not be permitted to offer further testimony on a point concerning which the defendant has offered no testimony. *Mahon v. Wolff* only extends the rule to "the points attacked," and in *Ayres v. Harris*, Judge Henry says that as to any point that has not been attacked, it is the trial court's duty to refuse to admit additional testimony by plaintiff. Whether the admission of such testimony is rever-

sible error does not seem to have been directly passed upon by the supreme court, though there is a dictum in Railway v. Robinson, 79 T. 608, that it would rarely be so.

See also Mayer v. Walker, 82 T. 225 (17 S. W. 505); Railway v. Robinson, 79 T. 608 (15 S. W. 584); City v. Tobin, 57 S. W. (C. A.) 319, where held not to be reversible error.

§ 263. *Kaufman v. Wooters, 79 T. 205 (13 S. W. 549).*

A devisee or legatee is personally liable to creditors of the estate to the extent of the assets received by her.

Contra: Blinn v. McDonald, 92 T. 604 (46 S. W. 787; 48 S. W. 571, 50 S. W. 931).

See Mayes v. Jones, § 329, and note.

§ 264. *Keener v. Moss, 66 T. 181.*

The decree recites, that it appeared from the pleadings and evidence, that the property sought to be partitioned was not susceptible of division amongst those entitled to distributive interests therein, and for that reason the court ordered a sale among the several part owners thereof. There was no appointment of commissioners to make the partition of the property, as required by the statute. This proceeding is statutory, and the judgment for a sale of the land sought to be partitioned is authorized only in the event that the commissioners reported to the court that a fair and equitable division of the real estate to be divided, or some part thereof, can not be made. *Contra: Moore v. Blagge, 91 T. 151 (38 S. W. 979).*

A court of equity has jurisdiction, independent of the statute, to order property sold for partition, when found incapable of division in kind, without serious injury to the interests of the parties, and a decree in partition is not void so as to be subject to collateral attack, because ordering sale and making of deed by the sheriff, without any provision for the appointment of commissioners and their report, reporting the property incapable of partition.

NOTE.—Blagge v. Moore, 23 S. W. 466; Blagge v. Moore, 26 S. W. 305; Grassmeyer v. Beeson, 18 T. 754; Moore v. Blagge, 41 S. W. 465; Tieman v. Baker, 63 T. 641; Blagge v. Shaw, 41 S. W. 756.

§ 271. *King v. Jones*, 78 T. 285 (14 S. W. 571).

Under the act of April 18, 1883, a party's right to purchase school land is dependent upon his becoming an actual settler, and until he becomes an actual settler he has no right to sell the land as authorized by the twelfth section of that act.

Limited: *Chancery v. State*, 84 T. 529 (19 S. W. 706).

While actual settlement is a condition precedent to the right to purchase the land, yet when the settlement is made upon it, it is not necessary that the purchaser keep up the possession in order that he may sell his right in the land.

NOTE.—*Smisson v. State*, 71 T. 222 (6 S. W. 560); *Coleman v. Lord*, 72 T. 288 (10 S. W. 91); *State v. Opperman*, 74 T. 141 (11 S. W. 1076); *Taylor v. Burke*, 66 T. 643 (1 S. W. 910).

§ 272. *Kinney v. Zimpleman*, 36 T. 554.

Holding act April 24, 1871, with reference to levy of school tax, valid.

Overruled: *Willis v. Owen*, 43 T. 42.

Here the same act is held unconstitutional.

§ 273. *Kirk v. Navigation Co.*, 49 T. 213.

Property was conveyed to the wife, and in the deed the consideration is stated to have been paid by her. *Held*: The wife having acquired property during marriage, although the deed is taken in her name, the presumption obtains that it was community property and the purchaser is not put upon notice that it is her separate estate by the recitals in the deed that the consideration was paid by her. It is otherwise if the recitals show that the consideration paid was the wife's separate estate.

Limited: *Montgomery v. Noyse*, 73 T. 203 (11 S. W. 138).

In a conveyance to the husband and wife, the consideration in the deed is stated to be that certain heirs, without naming them, abandoned all claim to a headright survey in conflict with the land conveyed. *Held*: While the deed vested the legal title in the husband and wife, the equitable title to the land was in the wife alone, for the recitals in the deed were sufficient to put the purchaser upon inquiry that the consideration for the property purchased, was separate property of the

wife. The doctrine announced in *Kirk v. Navigation Co.*, ought not to have extended so as to shield a purchaser in cases like the present.

NOTE.—*McCutcheon v. Purinton*, 84 T. 603 (19 S. W. 710); *Cooke v. Bremond*, 27 T. 457.

The principal announced in the limited case ought never to have been announced, much less extended. To say that a recital in a deed, that the wife paid the purchase money, is not sufficient to put a purchaser upon inquiry as to her rights, is to announce a proposition that would not be considered sound, if announced in an action between other parties. Human experience teaches that a purchaser upon being confronted with such a recital, if he was possessed of ordinary intelligence and prudence, would proceed to inquire in order to ascertain to whom the money belonged that was paid for the land. It is certainly not reasonable to hold that a recital that the wife paid the purchase money, is not equivalent to saying that the means used in making the payment was her separate money.

§ 274. *Kremer v. Haynie*, 67 T. 450 (3 S. W. 676).

Minors who were sought to be made defendants in a suit for partition, who resided beyond the limits of the county in which the suit was pending, were served with a copy of the writ only, and not with copies of the petition. *Held*: That the jurisdiction of the court did not attach by service of process, and it had no power to appoint for the defendants thus served, a guardian *ad litem*. The decree was of no more validity than if no guardian at all had been appointed for the minors.

Questioned: *Alston v. Emerson*, 83 T. 231 (18 S. W. 566).

In a suit of trespass to try title, the defendant claimed title under a judgment rendered in a partition suit where the minors were not cited, though represented by a guardian *ad litem* appointed by the court. *Held*: That the judgment thus rendered was voidable and not void, and could not be collaterally attacked.

NOTE.—*The case of Sprague v. Haines*, 68 T. 218 (4 S. W. 371), seems to be in accord with the overruled case, while the following are in accord with the overruling case: *Kavens v. Allcorn*, 9 T. 34; *Wheeler v. Ahrenbeak*, 54 T. 536; *Thomas v. Jones*, 10 T. 52; *McAnear v. Epperson*, 54 T. 220.

Judge Stayton, in the overruling case, appears to have

ter how much property the mortgagor might have at the time of the execution of the mortgage, he might not, at his death, leave a homestead in kind, and in that event the allowance therefor would be superior to the lien.

The statute referred to in express terms only protects liens which "have been given by the husband and wife," and it is possible that the supreme court, disregarding the reason given by the court of civil appeals, was of the opinion that as the lien had not been given by a "husband and wife," the statute was not a protection to the lienholder as against the allowance, and, therefore, refused a writ because the result reached was considered correct. This suggestion is made merely because of the possible danger there might be of accepting a mortgage from a widow, or widower, where there are constituents of the family who might be entitled to an allowance in lieu of a homestead, in the event of the mortgagor's death.

§ 278. Lacoste v. Duffy, 49 T. 767.

The supreme court will not entertain an appeal in a suit to determine the title to an office, after the term of office under the law has expired. The *appeal* should be dismissed.

Contra: McWhorter v. Northcutt, 58 S. W. 720.

While the supreme court will not entertain an appeal in such case, the rule is not to dismiss the *appeal* but to dismiss the case, because the latter course vacates the judgment of the trial court and leaves a subsequent litigation between the *parties for the fees of the office unembarrassed by a former adjudication*. The statement in Lacoste v. Duffy, that the *appeal* should be dismissed, was doubtless the result of inadvertence, because the *case* was in fact dismissed.

§ 279. Lacoste v. Odham, 26 T. 458.

A sale of lands to an unnaturalized alien, under the laws of the Republic of Mexico, was a nullity.

Overruled: Baker v. Westcott, 73 T. 129 (11 S. W. 157).

See *Holliman v. Peebles*, § 227.

§ 280. Lambert v. Williams, 2 C. A. 415 (21 S. W. 108).

An assignment of error "that the court erred in giving charge number 2, as requested by plaintiff," is too general to require consideration. It should distinctly specify the ground of error relied on.

Contra: Clarendon Land Co. v. McClelland, 86 T. 179 (23 S. W. 536).

See *Pearson v. Flanagan*, § 373.

§ 281. *Laredo Electric Light Co. v. U. S. Electric Light Co.*, 26 S. W. 310.

The Revised Statutes which bars, after two years, "actions for debt where the indebtedness is not evidenced by a contract in writing," does not apply to an action for the purpose of goods sold on a written order, although it contains no express promise to pay.

Overruled: *Faires v. Cockrill*, 88 T. 428 (35 S. W. 191).

Cockrill, Faires and others executed a written obligation to the S. A. & A. P. Ry. Co., by which they agreed to secure right of way and depot grounds and pay for the same, to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract, and sued Faires and the other signers for their share of the amount paid. *Held*: That the railway company could have maintained an action thereon, but Cockrill could not do so, for his cause of action was upon the implied promise of Faires and others to indemnify him for whatever he should pay in their behalf, and his action was barred by the statute of limitation of two years.

NOTE.—See note, *Sublett v. McKinney*, § 453.

§ 282. *Latham v. Selkirk*, 11 T. 314.

In an action of trial of the right of property seized under execution, all the plaintiff can be required to prove is the execution. The claimant may object to the execution, and even the judgment, but he can not attack it for fraud, for that can only be done in the character of a creditor.

Contra: *Livingston v. Wright*, 68 T. 707 (5 S. W. 407).

The language of the statute is positive and is without qualification; and it should be construed to mean what it says, and that in the absence of fraud or collusion between the plaintiff and defendant in the writ, the claimant should not be permitted, in the statutory proceeding, to go behind the process and inquire into the debt upon which it is founded.

NOTE.—*Webb v. Mallard*, 27 T. 84; *Still v. Focke*, 66 T. 718 (2 S. W. 59); *Ft. Worth Pub. Co. v. Hitson*, 86 T. 234 (14 S. W. 843; 16 S. W. 551); *McFaddin v. Spencer*,

18 T. 341; *Heidenheimer v. Bledsoe*, 1 W. & W., sec. 319; *Lehman v. Stone*, 4 W. & W., sec. 121; *Meador v. Arindle*, 58 T. 450; *Hamburg v. Wood*, 66 T. 173 (18 S. W. 623); *Tillman v. McDonough*, 2 W. & W., sec. 54; *Davis v. Bank*, 7 C. A. 41 (26 S. W. 222); *Earle v. Thomas*, 14 T. 591; *Portis v. Parker*, 22 T. 708; *Seeligson v. Staples*, 1 W. & W., sec. 1070; *Saunders v. Ireland*, 27 S. W. 880.

In the case of *Roos v. Lewyn*, 24 S. W. 538, the case of *Latham v. Selkirk* is questioned upon the necessity of the plaintiff offering in evidence the execution. The case mentioned is also questioned in *Webb v. Mallard*, in so far as it holds the right to contest the judgment and execution in the character of a creditor.

The doubted case is also criticised by Justice Gaines in the case of *Ft. Worth v. Hitson*, above cited, in which he holds that that part of the opinion stating that he can only attack the judgment in the character of a creditor, is held to be dicta. The law, as now announced by the latest decisions, appears to be that the claimant, whether he be creditor or purchaser, can contest both the validity of the execution, and the judgment authorizing its issuance, and can even contest the validity of the debt upon which the judgment was rendered, for fraud or collusion, by special plea filed in due order of pleading, pointing out the grounds relied upon for showing their invalidity.

§ 283. *Lea v. Hernandez*, 10 T. 137.

Where a municipal corporation fails to elect officers, and there are none acting *de facto*, the corporation is dissolved.

Overruled: *Buford v. The State of Texas*, 72 T. 182 (10 S. W. 401).

In this case it was held that although for several years prior to the election in 1888, there had been no officers elected in the town of Henderson, in fact, no city government or officials, the corporation was not dissolved. *Lea v. Hernandez* is referred to and disapproved.

NOTE.—*State v. Dunson*, 71 T. 65 (9 S. W. 103).

§ 284. *Leach v. State*, 36 S. W. (Court Crim. App.) 471.

Holds the law conferring upon a municipal officer—a city judge—authority to try offenses against the laws of the state unconstitutional.

Contra: *Harris County v. Stewart*, 91 T. 415 (41 S. W. 650).

Here the supreme court held the same acts to be constitutional and the officers entitled to recover their fees performed thereunder.

NOTE.—*May v. Finley*, 91 T. 352 (43 S. W. 257).

§ 285. *Lee v. Smith*, 18 T. 142.

Where the husband abandoned his wife in the state of Missouri, moved to Texas and married a second wife, who is ignorant that her husband has a wife living, and the husband and second wife, by the joint labor accumulate property, it is held, in a suit between children of the first marriage, and the wife and children of the second marriage, that the second marriage is putative and as the wife was innocent she and her children thereby acquired all the rights pertaining to a lawful marriage, and the wife of the second marriage was entitled to one half of the property, and the children of both marriages to the other half.

Contra: *Routh v. Routh*, 57 T. 595.

The parties were married in the state of Illinois; the husband abandoned the wife and moved to Texas, where he married the second wife, the first living and undivorced, and the second wife being ignorant of the fact. They accumulated property during the existence of the second marriage. On the death of the husband, the first wife sued for her community interest. *Held*, the second marriage not being lawful, the incident of community rights which belong only to a lawful conjugal partnership, will not attach to it. Therefore, the first is entitled to recover.

NOTE.—*It must be remembered that the first case was decided under the civil law of Spain, which was in force in Texas at the date of the second marriage (1831). The second case was decided under the common law which was adopted in the Republic of Texas in 1840. Doubtless, both decisions were right in view of the different laws under which they were decided.*

See note to *Smith v. Smith*, § 430.

§ 286. *Legate v. Legate*, 87 T. 248 (28 S. W. 281).

Where a parent, who has voluntarily relinquished the custody of an infant child to another, seeks to retake control of it, the child is entitled, as a matter of law, to the benefit of that home which will best promote its welfare, and the question as

to whose custody will be most beneficial to the infant is one of fact to be determined by the trial court upon hearing all the evidence tending to shed any light upon the homes and the people inhabiting them, including their entire connection with, affection for, and present and future ability to care and provide for the child.

Contra: State ex rel. Wood v. Deaton, 93 T. 243 (54 S. W. 901).

Although a parent has voluntarily relinquished a child, yet in the absence of any positive disqualification of such parent, he has a paramount right to the custody of it when he desires it.

NOTE.—Justice Brown seems to hold that there is no conflict between these cases, but looking to the results reached, it seems impossible to reconcile them. In the Legate case, the question propounded to the supreme court stated that "the father and mother are also qualified in every way to care for and raise the child." And notwithstanding this finding of the trial court, the supreme court held that the child was entitled as a matter of law to the benefit of that home which would best promote its welfare, and that it was a question of fact for the trial court to determine which was the best home and award the custody accordingly.

In the Wood-Deaton case, the district court found "that the interest and welfare of the child will be as well if not better subserved by remaining with the respondent (the person to whom the child had been relinquished). Yet in this case, because the court below found that the parent was qualified to take it, the supreme court holds that, as a matter of law, she is entitled to it and renders judgment in her favor. The Legate case directs the custody to whoever the trial court shall find, as a fact, would best subserve the child's interest; the Wood-Deaton case holds the parent entitled to the custody, as a matter of law, in absence of any positive disqualification.

§ 287. L. & H. Blum Land Co. v. Harbin, 33 S. W. (C. A.)

153.

Where one claims title to land, through sale under an attachment lien as against a prior unrecorded deed, the burden is on him to show that those under whom he claims did not have notice of the unrecorded deed at the time the attachment was levied.

Contra: Barnett v. Squyres, 93 T. 193.

In a contest between one claiming through an execution sale, under a duly abstracted judgment, and the grantee of an unrecorded deed or mortgage, the burden is on the person asserting right under the unrecorded instrument to show notice to the creditor prior to the acquisition of his lien.

NOTE.—See *Rogers v. Houston*, 60 S. W. (Sup.) 869; *Turner v. Cochran*, 61 S. W. (Sup.) 923; *Id.*, 63 S. W. (C. A.) 151.

§ 288. *Levy v. McDowell*, 45 T. 220.

It is reversible error for the district judge to give a verbal charge. The statute prohibits it.

Contra: G. H. & S. A. Ry. Co. v. Dunlavy, 56 T. 256.

The statute requiring instructions to the jury to be in writing is directory and a violation thereof can not be assigned as error.

NOTE.—*Parker v. Chancellor*, 78 T. 527 (15 S. W. 157); *Berry v. Railway*, 72 T. 624 (10 S. W. 726); *Coyle v. McNabb*, 4 W. & W., sec. 284; *Reid v. Reid*, 11 T. 585; *Chapman v. Sneed*, 17 T. 428; *Boon v. Thompson*, 17 T. 606; *Railway v. Dunlavy*, 56 T. 256; *Toby v. Heidenheimer*, 1 W. & W., sec. 795; *Railway v. Holt*, 1 W. & W., sec. 835.

§ 289. *Lewis v. Aylott*, 45 T. 191.

Under article 2248, Revised Statutes, a devisee or legatee, in a proceeding to probate a will, is incompetent to testify to statements by or transactions "with the deceased," which facts constitute the will sought to be admitted to probate.

Limited: Martin v. McAdams, 87 T. 225 (27 S. W. 255).

In a proceeding to probate a will, a devisee may testify to the genuineness of the testator's signature, and he is not prohibited by article 2248, from so testifying. This, however, will not apply to a devisee testifying to a nuncupative will.

§ 290. *Lincoln v. Anderson*, 51 S. W. 278.

The district court has no power under the present constitution to enjoin a sale under a levy of execution under a judgment of the county court.

Limited: Tucker v. Williams, 56 S. W. 586.

A void judgment of the county court may be enjoined where the party seeking the injunction has no right of appeal.

§ 291. *Linthicum v. March*, 37 T. 349.

In trespass to try title, the defendant may defeat the rule of common source by a declaration that he does not claim under it, and in such case, the plaintiff must show complete title.

Overruled: *Burns v. Goff*, 79 T. 237 (14 S. W. 1009).

When the plaintiff proves common source and a superior title under the common source, he is entitled to recover, unless the defendant shows a title superior to the common source, which he has acquired, or that the title never vested in the common source. The defendant can not defeat the rule of common source by a declaration that he does not claim under it.

NOTE.—Following *Burns v. Goff*, see *Smith v. Davis*, 47 S. W. (C. A.) 101, and cases cited. *Rice v. Railway*, 87 T. 90 (26 S. W. 1047); *Hilbum v. Harris*, 2 C. A. 397 (21 S. W. 572); *Ogden v. Bosse*, 86 T. 336 (24 S. W. 798); *Hardware Co. v. Davis*, 87 T. 146 (27 S. W. 62); *Keys v. Mason*, 44 T. 143.

§ 292. *Lister v. Campbell*, 46 S. W. (C. A.) 876.

Where the plaintiff in justice court sued for \$32.79, and the defendant reconvened and claimed damages amounting to \$100, the court of civil appeals has jurisdiction of the case on appeal because the amount involved includes both the plaintiff's debt and the defendant's claim for damages.

Contra: *Crosby v. Crosby*, 92 T. 441 (49 S. W. 359).

Where there is a cross-action in the nature of a counter-claim or plea in reconvention, there are two cases which are triable together, and in order to give an appellate court jurisdiction over the matter, where such jurisdiction depends on the amount in controversy, either the plaintiff's demand, or that of defendant must of itself reach the jurisdictional sum. In this case plaintiff sued for \$83, and defendant pleaded a counter-claim of \$48, and it was held that the court of civil appeals had no jurisdiction.

§ 293. *Little v. Birdwell*, 27 T. 689.

When an estate is solvent and is ready for partition and distribution, it is too late for the widow and children to apply

for an allowance in lieu of the property exempt from execution. This is not by reason of any supposed forfeiture incurred by neglect or delay, but because the time has elapsed during which the statute designs to secure such property to the widow and children, and an allowance of it subsequent to that time would be in contravention of the provision which directs that such property shall be included in the partition and distribution of the estate.

Contra: *Mabry v. Ward*, 50 T. 404.

Where the widow and children are entitled to an allowance in lieu of exempt property, their right is not affected by the failure of the probate judge to make the allowance at the time required.

§ 294. *Little v. State*, 75 T. 616 (11 S. W. 862).

In an information in the nature of quo warranto to try title of an office, the value of the office must be alleged to be within the jurisdiction of the district court.

Contra: *Dean v. State*, 88 T. 290 (30 S. W. 1047, 31 S. W. 185).

See *Bell v. Faulkner*, § 21.

§ 295. *Longcote v. Bruce*, 44 T. 434.

In a suit against a sheriff for levying an attachment, he can not make the principal and sureties on his indemnity bond, parties to the suit and secure judgment over against them.

Contra: *Stevens v. Wolf*, 77 T. 215 (14 S. W. 29).

Under the present statute, the officer making a levy is authorized to make the principal and sureties on his indemnity bond parties to the suit against him.

NOTE.—*Longcote v. Bruce* was decided prior to the statute referred to. General Laws 1885, p. 90.

§ 296. *Longino v. Ward*, 1 W. & W., sec. 522.

The judge should sign, officially, the charge given to the jury. He should, also, when he gives or refuses a charge requested, indicate by writing upon the same, whether it was given or refused, and sign it officially, and the charges should be marked "filed" by the clerk, and should be copied in the transcript together with his indorsement thereon.

Contra: Parker v. Chancellor, 78 T. 524 (15 S. W. 157).

See *Barnes v. Jamison*, § 13.

NOTE.—In the case of *Longino v. Ward*, the judge delivering the opinion does not, in so many words, state that the failure of the trial judge to sign the charge, is reversible error, yet the cause is reversed and remanded, that being one of the assigned errors which the court sustained.

§ 297. Longley v. Warren, 11 C. A. 269 (33 S. W. 304).

One settling on land to acquire it under the homestead statute, erroneously believing it to be vacant land, may, by such occupancy, acquire title by adverse possession against the true owner.

Contra: Schleicher v. Gatlin, 85 T. 270 (20 S. W. 120).

See *Converse v. Ringer*, § 87.

§ 298. Looscan v. Harris Co., 58 T. 514.

The commissioners' court is vested with management of the financial affairs of the county. It must be deemed the quasi-executive head of the county.

Limited: Bland v. Orr, 90 T. 492 (39 S. W. 558).

There are some broad expressions in *Colorado County v. Belhe*, 44 T. 447, and in *Looscan v. Harris Co.*, 58 T. 511, in reference to the powers of the commissioners' courts over county affairs, which are well enough when applied to the facts of those cases. If these utterances be construed as holding that such courts have general control over the finances of a county, such as is ordinarily conferred on the directors of a private corporation, they can not be maintained.

In this case, it was held that the commissioners' court had no power to compromise the debt of a defaulting treasurer by accepting a deed of land from a surety on his bond.

NOTE.—In view of the decision of *Bland v. Orr*, the legislature amended article 1537, enlarging the commissioners' court's powers. See Acts 1897, p. 210. This statute specially authorizes the commissioners' court to "adjust" claims.

See § 81.

§ 299. Louisiana W. E. Ry. Co. v. McDonald, 52 S. W.
(C. A.) 649.

A railway company owes no duty to keep a lookout to discover a trespasser on the track, and it is immaterial whether he had fallen in a fit of epilepsy or laid down there in a state of intoxication; the company is not liable, unless its servants discovered him in time to avoid injury to him.

Contra: H. & T. C. Ry. Co. v. Sympkins, 54 T. 615.

It is the duty of a railway company to keep a reasonable lookout for persons on its track—even trespassers—and a failure to so do is negligence, for which it is liable unless its liability is defeated by contributory negligence on the part of the person injured.

NOTE.—In *T. & P. Ry. Co. v. Watkins*, 88 T. 20 (29 S. W. 232), the rule adopted in *Railway v. Sympkins* is approved and it is said that “where the party injured was a wrongdoer or trespasser at the time of the injury, the issue of contributory negligence is, as a general rule, established as a matter of law; but not so in all cases.” The rule is recognized in this case that it is not negligence, *per se*, to walk on a railway track at a point which has been commonly used by the public as a pathway. In *T. & P. Ry. Co. v. Roberts*, 45 S. W. 218, the deceased had ridden along the railroad track for one hundred and eighty yards and the point where he was killed had frequently been used by the public as a crossing. While endeavoring to get his mule off the track he and his mule were both killed. The court of civil appeals held that the question of contributory negligence on his part was a question of fact for the jury. The supreme court granted a writ of error and expressed a doubt as to the correctness of this view, but affirmed the case on the ground that the trial court had submitted only the issue of discovered peril.

The question as to when an act can be declared negligence as a matter of law, is one that seems involved in considerable doubt, and the writer has thought it proper to cite, in this connection, some of our authorities bearing on the point.

In *Lee v. Railway Co.*, 89 T. 583 (36 S. W. 63), Justice Brown lays down this rule: “Negligence, whether of the plaintiff or defendant, is generally a question of fact, and becomes a question of law, to be decided by the court, only when the act done is in violation of some law, or when the facts are

across the track, and was killed. The point of accident was within the section limits of a station and it was claimed for the plaintiff that it was customary for trains to slow down within said limits, and that the deceased knew this custom and relying thereon thought he could get across in safety. Held, that he was guilty of contributory negligence as a matter of law and a verdict was properly instructed.

See *G. C. & S. F. Ry. Co. v. Wagley*, § 186.

On this point, see, also, G. C. & S. F. Ry. Co. v. Harris, 51 S. W. 864; *Railway v. Hubert*, 54 S. W. 1074; *Railway v. Harrin*, 54 S. W. 629; *G. C. & S. F. Ry. Co. v. Gasscamp*, 69 T. 545 (7 S. W. 227); *Chatham v. Jones*, 69 T. 746 (7 S. W. 600); *T. & P. Ry. Co. v. Walker*, 49 S. W. 642; *Railway v. Cardena*, 54 S. W. 312.

§ 300. *Low v. Felton*, 84 T. 383 (19 S. W. 693).

An heir is *personally* liable for the debts of the ancestor to the extent of the value of property received by him.

Contra: *Blinn v. McDonald*, 92 T. 604 (50 S. W. 931, 46 S. W. 787).

See full discussion under *Mayes v. Jones*, § 329.

§ 301. *Luckie v. Watt*, 77 T. 262 (13 S. W. 1035).

The mere fact that one was the head of a family, in actual possession in good faith of public school land in January, 1884. and that he had located on the same for the purpose of acquiring a homestead, conferred no right as against a purchaser to whom the land was awarded by the state land board. *Limited*: *Harris v. Byrd*, 3 C. A. 677 (22 S. W. 659).

The state land board can not disregard plain requirements of the law, and refuse to recognize and protect the prior right of an actual settler.

NOTE.—*Chancey v. State*, 84 T. 529 (19 S. W. 706); *Martin v. McCarty*, 74 T. 132 (10 S. W. 221); *Smisson v. State*, 71 T. 222 (9 S. W. 112); *Coleman v. Ford*, 72 T. 288 (10 S. W. 91); *State v. Opperman*, 74 T. 141 (11 S. W. 1076).

§ 302. *Lufkin v. City of Galveston*, 58 T. 545.

The constitution of the state (article 16, section 50). makes no difference between the homestead and any other real

property as to its liability to be sold for taxes that may be due on it; nor does it draw any distinction between general and special taxes to which it may be subject. The plain import of its terms is, that it is not protected from forced sale for lawful taxes that may be due on it. This instrument throws the most ample protection around the homestead. In return, it clearly intends that it shall bear its just proportionate share in the burdens imposed by the government. It was intended to be alike liable as other real property to all taxes, state, county or municipal, that could, under its restrictions be just and lawfully laid upon the real estate of a citizen.

Overruled: Higgins v. Bordages, 88 T. 464 (31 S. W. 52, 803).

A special assessment against the homestead for a sidewalk is not a "tax" within the meaning of the constitution (article 16, section 50), and the homestead is not liable to forced sale for such assessments.

NOTE.—*Taylor v. Boyd*, 63 T. 533; *Allen v. Galveston*, 51 T. 320; *County of Harris v. Boyd*, 70 T. 241 (7 S. W. 713). These cases are cited as authority for the proposition that the assessments in such cases as *Lufkin v. Galveston*, and *Higgins v. Bordages*, are not "taxes" within the meaning of article 16, section 50, constitution.

§ 303. *McAllen v. Rhode*, 65 T. 348.

The district court has jurisdiction in a proceeding by quo warranto to try the title to an office, where its value is over five hundred dollars.

Contra: *Dean v. State*, 88 T. 290 (30 S. W. 1047, 31 S. W. 185).

See *Bell v. Faulkner*, § 21.

§ 304. *McAlpine v. Bennet*, 21 T. 535.

Where a case, remanded for a new trial, comes up again after such second trial, the transcript should contain the mandate, otherwise, upon the face of the record, the subsequent proceedings would appear to be without authority.

Overruled: *Warren v. Frederiches*, 83 T. 380 (18 S. W. 750).

It is not necessary, on a second appeal, in the same case, that the mandate in the first be set out in the transcript on the

second appeal, for the court will take judicial notice of its action on the first appeal.

§ 305. *McC Campbell v. Henderson*, 50 T. 601.

Creditors of the ancestor have a right to a *personal* judgment against the heirs to the extent that they have received assets from such ancestor.

Overruled: *Blinn v. McDonald*, 92 T. 604 (46 S. W. 787, 48 S. W. 571, 50 S. W. 931).

See *Mayes v. Jones*, § 329, and *note*.

§ 306. *McCarty v. H. & T. C. Ry. Co.*, 54 S. W. 421.

In a suit by a passenger against a railway company for personal injuries, it is error for the court to charge the jury that the carriers are required to exercise "the utmost degree of care." The carrier is only required to exercise that high degree of care which every prudent person exercises under like circumstances.

Contra: *Fort W. & D. C. Ry. Co. v. Rogers*, 60 S. W. 61.

In a suit by a passenger against a railway company for injuries received in a collision, the following charge was proper: "While the railroad companies are not to be regarded as insurers of the safety of their passengers, still they are required to use the utmost care to provide for their safety."

NOTE.—*Gallagher v. Bowie*, 66 T. 265 (17 S. W. 407); *Railway Co. v. Welch*, 86 T. 203 (24 S. W. 390); *Railway Co. v. Davis*, 23 S. W. 737; *Ft. W. & N. O. Ry. Co. v. Enos*, 50 S. W. 595; *T. C. Ry. Co. v. Stuart*, 1 C. A. 642; *Railway Co. v. Gorbett*, 49 T. 581; *Railway v. Stingle*, 2 C. A. 706; *G. C. & S. F. Ry. Co. v. Shields*, 9 C. A. 652 (28 S. W. 709, 29 S. W. 652); *Dallas Traction Co. v. Randolph*, 8 C. A. 213 (27 S. W. 925); *Fordyce v. Chancey*, 2 C. A. 27 (21 S. W. 181); *Railway Co. v. Cooper*, 2 C. A. 51 (20 S. W. 990). *The case of Gallagher v. Bowie*, 66 T. 265 (17 S. W. 407), is in accord with overruled case.

See § 149.

§ 307. *McClenney v. Floyd*, 3 T. 114.

A surety upon a bond, for the production of property seized under a writ of sequestration, is discharged by the delivery into the hands of the sheriff of the property, as well before as after verdict.

Contra: Krall v. Printing Press Co., 79 T. 556 (15 S. W. 565).

See *Siddall v. Goggan*, § 423.

§ 308. *McClure v. Sheek's Heirs*, 68 T. 426 (4 S. W. 552).

The deposition of a witness can not be read when he is present in court. The proper practice requires that he be introduced in person.

Contra: O'Connor v. Andrews, 81 T. 28 (16 S. W. 628).

It is within the discretion of the trial court to admit the deposition of a witness, though the witness be present in court.

NOTE.—In accord with *O'Connor v. Andrews*, see *Schmick v. Noel* 64 T. 406; *Id.* 72 T. 1 (8 S. W. 83); *Hittson v. Bank*, 14 S. W. 780; *H. & T. C. Ry. v. McKenzie*, 41 S. W. 831; *S. A. St. Ry. v. Renkin*, 15 C. A. 229 (38 S. W. 829).

In *Randall v. Collins*, 52 T. 435, the same rule was expressed as in *McClure v. Sheeks*, but the case was reversed on other grounds. In *McClure v. Sheeks* the deposition was excluded by the trial court.

§ 309. *McCombs v. City of Rockport*, 14 C. A. 560 (37 S. W. 988).

No tax can be recovered upon a lot or block of land situated in a city, where such lot or block has been assessed jointly with some other lot, unless the property has been rendered by its owner to be assessed jointly.

Contra: *Masterson v. State*, 17 C. A. 91 (42 S. W. 1003).

Writ refused.

The lien for taxes attaches to all the land owned by the delinquent (except his homestead, which is liable only for its own tax) and a number of tracts may be sold to pay a lump sum due on all the land.

NOTE.—*Guerquin v. City of San Antonio*, 50 S. W. (C. A.) 140 (writ denied), and *Harris v. City of Houston*, 21 C. A. 432 (52 S. W. 653), hold with *Masterson v. State*. *State v. Baker*, 49 T. 763, *Clegg v. State*, 42 T. 605, and *Edmonson v. Galveston*, 53 T. 157, all arose under the Constitution of 1869, which provided that each lot should be liable only for its own taxes.

§ 310. *McCray v. G. H. & S. A. Ry. Co.*, 89 T. 171
(34 S. W. 95).

In this suit between master and servant, the supreme court quoted with approval from section 59, *Shearman & Redfield* on Negligence, that, "In many cases the maxim, *res ipsa loquitur*, applies. The affair speaks for itself."

Criticised: *Broadway v. S. A. Gas Co.*, 60 S. W. (C. A.) 270.

"In the case of *McCray v. Ry. Co.*, 89 T. 168, the supreme court cites *Shearman & Redfield* on Negligence, section 59, to the effect that, 'In many cases the maxim *res ipsa loquitur* applies,' as being applicable to injuries received by the servant through the negligence of the master, but such is not the case. The rule announced in the section quoted applies to other cases than those between master and servant. In section 223, of the same text-book, under the head of 'Liability of Masters to Servants,' it is distinctly said that the rule announced in section 59 does not apply as between master and servant."

NOTE.—*A writ of error was refused in the Broadway case, and there is a distinction between the cases, but the supreme court seems to hold the doctrine of res ipsa loquitur applies between master and servant as well as in other cases, or to be more exact, the rule is declared to be that; "Where the particular thing causing the injury has been shown to be under the management of the defendant (master) or his servants, and the accident is such as in the ordinary course of things does not happen, if those who have the management use proper care. it affords reasonable evidence, in the absence of explanation that the accident arose from want of care."* *Washington v. Ry.* 90 T. 320 (38 S. W. 764).

See also *G. C. & S. F. Ry. Co. v. Wood*, 63 S. W. 164.

§ 311. *McDaniel v. Garrett*, 11 C. A. 57 (31 S. W. 721).

The act of April 30, 1846 (Pasch. Dig., art. 1003), requiring a married woman transferring her personal property by a written instrument to acknowledge the same privily and apart from her husband, applies to the written transfer of a land certificate.

Contra: *Ikard v. Thompson*, 81 T. 285 (16 S. W. 1019).

If it be considered that the law in force at that time

(1846) deprived married women of the power to sell and convey their personal property except in writing and when privily examined, which we do not affirm, we still can not see why such a transaction as the one now being considered should be treated as a sale and conveyance under the married woman's act and prohibited by it, any more than such a transaction should be regarded as a sale prohibited by the statute of frauds. We think that such a contract to acquire land by a married woman, by means of a land certificate held by her as her separate property as well as a contract for the partition of her land, may be by parol, and that principle, as well as the decision of this court, warrant the conclusion that such contracts of a married woman as she may properly make by parol for the acquisition of land or for its partition may equally well be proved by her written declarations, even when not acknowledged by her in the manner the statute requires to make effective her conveyance of real estate.

§ 312. McDonough v. Bank, 34 T. 310.

Where a promotor of a corporation employs a person to perform services with reference to the proposed corporation. the corporation by accepting the benefit of such services ratifies and becomes bound on the promotor's contract.

Overruled: Weatherford M. W. & N. Ry. Co. v. Granger, 86 T. 358 (24 S. W. 792).

A promotor of the defendant company, prior to the incorporation, employed the plaintiff who aided in getting up a bonus for the proposed corporation, and by advice otherwise aided the enterprise before and after the incorporation. on the employment of the promotor. *Held*, that the company was not liable for the services before the incorporation.

McDonough v. Bank, referred to and disapproved. .

§ 313. McIntyre v. Lucke, 77 T. 259 (13 S. W. 1027).

The service of this notice, in the manner required by this statute (article 4370), is indispensable to the exercise of jurisdiction by the commissioners' court. It is a jurisdictional fact which must be affirmatively shown to sustain the jurisdiction of the commissioners' court in making an order establishing and directing that a public road be opened on the land of a citizen. Without proper service of such notice, the action

the rule of the civil law. The great weight of authority elsewhere seems to support the common law rather than the civil law rule. Janes v. Buzzard, Hempst. (U. S.) 240; Hughes v. Todd, 2 Duv. (Ky.) 189; Scherer v. Upton, 31 T. 617; Alston v. Balls, 12 Ark. 664; Ellett v. Bobb, 6 Mo. 323; Perkins v. Reeds, 8 Mo. 33; Outlaw v. Cook, Minor (Ala.) 257; Perry v. Hewlett, 5 Port (Ala.) 318; Ricks v. Dillahunty, 8 Port. (Ala.) 134; Harrison v. Murrell, 5 T. B. Mon. (Ky.) 360; Harmon v. Fleming, 25 Miss. 135; Dickinson v. Cruise, 1 Head (Tenn.) 258; Hicks v. Parham, 3 Hayw. (Tenn.) 224, 9 Am. Dec. 745; Young v. Forgey, 4 Hayw. (Tenn.) 10.

If there is an analogy between the rule stated and the common-law doctrine respecting the obligation of the tenant for the payment of rent of demised property, and the analogy appears to be recognized by all the courts, then the principle announced in McLemore v. McClellan, and Diamond v. Harris, has received support by other decisions in this state. It has been repeatedly held by our supreme court that where leased property is destroyed by fire before the expiration of the term of lease, the tenant is liable for the payment of rent during the full term in the absence of some stipulation in the lease relieving him from liability.

§ 317. McLeod Artesian Well Co. v. Craig, 43 S. W. 934.

Sureties on a replevy bond are liable, notwithstanding the quashal of the sequestration process.

Contra: Mitchell v. Bloom, 91 T. 634 (45 S. W. 558).

Where the writ falls, the bond falls with it. See cases cited under Sexton v. Hindman, § 418.

§ 318. McNickle v. Texarkana Natl. Bank, 23 S. W. 428.

It has long been the established practice of our supreme court to deny a motion for certiorari to perfect the record when the same is made after the submission of the cause.

Contra: W. U. Tel. Co. v. O'Keefe, 87 T. 423 (28 S. W. 945).

In holding that it was too late to suggest a diminution of the records, and to apply for a certiorari to perfect it after the cause had been submitted, the court of civil appeals followed a rule of practice which is calculated to promote the

prompt dispatch of business and to preserve regularity of procedure, and which has been acted upon in more than one case in this court. But it is a rule which has not been universally observed. "It would have been, we believe, more correct in practice, when a party has evidence that a portion of his record has not been embodied in the transcript sent up, and he discovers this fact after the cause has been dismissed for want of having such portion included, to make his motion to the court suggesting such matter of diminution and supporting it by affidavit or such other evidence as he can procure, and to pray a special certiorari to the clerk of the court below to send up such matters as may have been omitted." These remarks were not necessary to a decision of the question then before the court; but the rule was announced by the court for the express purpose of establishing such a practice. The rule so announced is strictly applicable in the case before us.

NOTE.—*The following authorities are in accord with the overruled case: Grant v. Hill, 30 S. W. 952; Ross v. McGown, 58 T. 603; Mo. Pac. Ry. Co. v. Scott, 78 T. 361 (14 S. W. 791); Davis v. Estis, 4 C. A. 207 (11 S. W. 448).*

The following authorities are in accord with the overruling case: Harris v. Hopson, 5 T. 529; Davis v. McGhee, 24 T. 216; Hart v. Weatherford, 19 T. 57; G. C. & S. F. Ry. Co. v. Cannon, 88 T. 312; Wichita Valley Ry. Co. v. Perry, 87 T. 597; Freeman v. McAninch, 87 T. 132 (27 S. W. 97); Nasworthy v. Draper, 29 S. W. 557; St. Louis Ry. Co. v. Wills, 30 S. W. 248; Ry. Co. v. Jones, 29 S. W. 695.

§ 319. McMullen v. Guest, 6 T. 275.

Where the plaintiff is a resident of this state, he may obtain a personal judgment against a non-resident defendant, upon service by publication, and have the judgment satisfied out of any property within this state, belonging to the defendant.

Contra: Scott v. Streepy, 73 T. 547 (11 S. W. 532).

Where a judgment is rendered against a non-resident defendant, upon process served upon him without the limits of the state, the court was without jurisdiction and the judgment rendered is void.

NOTE.—*The following cases are in accord with the*
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overruled case: *Campbell v. Wilson*, 6 T. 379; *Butterworth v. Kinsey*, 14 T. 495; *Thouvenin v. Rodriguez*, 24 T. 468; *Fulshear v. Lawrence*, 1 W. & W., sec. 631.

The following cases are in accord with the overruling case: *Osborne v. Barnett*, 1 W. & W., sec. 129; *Shuber v. Holcombe*, 2 W. & W., sec. 244; *Murphy v. Wallace*, 3 W. & W., sec. 430; *Martin v. Cobb*, 77 T. 544.

The last-named cases follow the decision of the supreme court in the case of *Pennoyer v. Neff*, 95 U. S. 714. The military or provisional supreme court of Texas, in the case of *Herrington v. Williams*, 31 T. 448, announced the same principle as in *Pennoyer v. Neff*, but was expressly overruled by the supreme court of Texas in the case of *Wilson v. Zeigler*, 44 T. 657.

See *King's Conflicting Cases*, vol. 1, § 105.

§ 320. *Maddox v. Fenner*, 79 T. 279 (15 S. W. 237).

When unmarked lines of adjacent surveys are called for, and when from the other calls of such adjacent surveys the position of such unmarked lines can be ascertained with accuracy, and when in the absence of all evidence as to how the survey was actually made there arises a controversy as to whether course and distance or the unmarked line of another survey shall prevail, we see no good reason why the survey line should not be given the dignity of an "artificial object," and prevail over course and distance.

Criticised: *Ware v. McQuinn*, 7 C. A. 107 (26 S. W. 126).

In an action to settle the boundary line between two tracts of land, where the surveys were made at the same time, by the same person, and call for each other, but no boundary line was fixed on the ground, a space left between them, according to the surveyor's field notes, will be apportioned to the owners of the tracts in proportion to their respective interests.

NOTE.—*Booth v. Strippleman*, 26 T. 436; *McCown v. Hill*, 26 T. 359; *Gerald v. Freeman*, 68 T. 201 (4 S. W. 256); *Duff v. Moore*, 68 T. 270 (4 S. W. 530); *Fagan v. Stoner*, 67 T. 286 (3 S. W. 44); *Holland v. Thompson*, 12 C. A. 471 (35 S. W. 19); *Baker v. Light*, 80 T. 627 (16 S. W. 330), are in accord with the criticised case.

§ 321. Manning v. San Antonio Club, 63 T. 166.

Under a by-law of a social club, providing that: "Any member shall forfeit his membership to the club, whose conduct shall be pronounced by a vote of the majority of the board of directors present at a meeting to have endangered the welfare, interest and character of the club," a member may be expelled without notice in the absence of a by-law requiring notice.

Contra: Cotton-Jammers & Longshoreman Assn. v. Taylor, 56 S. W. 553.

In this case, under practically the same by-law as in the Manning case, it was held that an expulsion without notice or trial was invalid, and that the party was entitled to reasonable notice of the nature of the charges against him, and an opportunity to be heard. The court distinguishes this case from the Manning case in that here valuable rights were involved.

§ 322. Manis v. Flood, 47 S. W. 1017.

The assignee of an obligation to pay rent is not entitled to a distress warrant to collect it. The word "assigns," in the statute giving distress warrants, refers to assignees of the reversion, and not of the rent.

Limited: Hatchell v. Miller, 53 S. W. 357.

While the assignment of a rent obligation does not carry the right to a distress warrant, it does pass the landlord's statutory lien, which may be foreclosed by the assignee.

§ 323. Markham v. Carothers, 47 T. 21.

Where a verbal trust is sought to be fixed in lands, it is proper to charge the jury that it must be established with clearness and certainty.

Contra: Prather v. Wilkens, 68 T. 187 (4 S. W. 252).

It is improper to charge a jury that an instrument must be regarded as a deed, unless the evidence *clearly* shows that it was intended as a mortgage.

NOTE.—*Pierce v. Fort*, 60 T. 464; *Willis v. Chowning*, 90 T. 625 (40 S. W. 395); *Smith v. Eastham*, 56 S. W. 218. and cases cited; *American Freehold Land and Mortgage Company v. Pace*, 56 S. W. 391.

§ 324. *Marler v. Handy*, 88 T. 421 (31 S. W. 636).

A husband alone executed a deed to the homestead, and after having abandoned it and acquired another homestead sought to recover it back. It was held that the deed made by him was not void under the constitution; and although inoperative so long as the property was occupied by him and his wife as a home, yet when he and his family removed therefrom to another homestead, he acting in good faith for the best interests of himself and his family, the deed became operative to vest title in the grantee, and the husband would be estopped thereby.

Limited: *Stallings v. Hullum*, 89 T. 431 (35 S. W. 2).

This was a suit by a wife to cancel a deed by herself and husband on the ground of fraud. The trial court held the deed void as to her and awarded her possession, but the conveyance was held effective to pass the husband's interest when it should cease to be her homestead. *Held*, by the supreme court, that the deed was void and the plaintiff was entitled to an absolute recovery of the property.

NOTE.—*Marler v. Handy* is not in any way overruled by this decision, but the expression there used, that "the deed was not void," is referred to and it is said that by that expression "it was not meant that it was valid as to the wife or that it could in the slightest manner affect her rights before a new homestead was acquired."

The effect of these decisions is that while the husband's deed may estop him, after the homestead has ceased, yet it can not in any way affect the homestead right, and notwithstanding such a deed, the husband and wife may thereafter, at any time while the property remains their homestead, convey the absolute title to it to another.

See *Stewart v. Mackey*, § 443.

§ 325. *Martin v. Payne*, 11 T. 292.

The written laws of another state can not be proven by parol.

Contra: *Sierra Madre Const. Co. v. Brick*, 55 S. W. 521.

The existence and meaning of foreign laws, as well written as unwritten, may be proved by calling professional people to give their opinions on the subject.

NOTE.—The rule laid down in *Martin v. Payne* seems to be that supported by the great weight of authority in America, and in this state, while that followed in *Sierra Madre Const. Co. v. Brick*, seems to be the rule followed in England. See secs. 486-488, *Greenleaf on Evidence*, and note to sec. 486; *Abbott's Int. Law*, p. 22. *Clardy v. Wilson*, 58 S. W. 52, follows *Const. Co. v. Brick*.

§ 326. *Marx v. Hill*, 46 T. 345.

An administration was granted in 1840, the record showing no extension of time, and no action therein until 1851, *Held*, that the presumption of law is that the administration was closed.

Overruled: *Branch v. Hanrick*, 70 T. 731 (8 S. W. 539).

See *Murphy v. Menard*, § 353.

§ 327. *Masterson v. Little*, 75 T. 682 (13 S. W. 154).

A purchaser of lands may rely upon the statute of frauds to invalidate a parol contract for its conveyance made between his vendor and one claiming adversely under such contract. A defendant in trespass to try title may interpose as a defense the fact that the plaintiff's claim to the land, derived from a common vendor, is invalid because founded on a contract which was not reduced to writing.

Contra: *Railway Co. v. Setlegast*, 79 T. 256.

The invalidity of a parol contract for the sale of land, prohibited by the statute of frauds, can not be set up by a stranger to it. The defense is personal to the party sought to be charged.

NOTE.—*League v. Davis*, 53 T. 9; *Lee v. Welmerding*, 57 T. 444.

§ 328. *Mayers v. Paxton*, 78 T. 196 (14 S. W. 568).

Limitation, when relied upon either as a ground of action or of defense, must be specially pleaded.

Contra: *Benavides v. Molino*, 60 S. W. (C. A.) 260.

Where the plaintiffs' petition, in trespass to try title, is in statutory form, he may prove title by limitation without pleading it specially. The statement in *Mayers v. Paxton* to the contrary was not necessary to a proper disposition of the case.

NOTE.—The supreme court refused a writ of error in *Benavides v. Molino*, (See 60 S. W. 875), on the ground that

the rule announced in *Mayers v. Paxton* was not the very point determined in that case and, therefore, the decision of the court of civil appeals did "overrule a decision of the supreme court."

In *Mayers v. Paxton* the plaintiff had pleaded his title by limitation, specially, in addition to the usual statutory form of petition, and it was held that he was not confined to showing the title so specially pleaded (i. e., limitation). The rule above quoted from *Mayers v. Paxton* was not absolutely necessary to a decision of that case, but it was relied upon as a reason why the plaintiff was not limited by his special pleading; and while the writ of error was refused, the supreme court indicates its approval of the dictum and says: "We are not inclined to recede from the rule announced in *Mayers v. Paxton* as to a necessity of pleading specially the statute of limitations, where the plaintiff, in an action of trespass to try title, seeks to recover upon a title acquired by adverse possession."

§ 329. *Mayer v. Jones*, 62 T. 365.

Creditors of the ancestor have a right to a *personal* judgment against the heirs, to the extent that they have received property from such ancestor. The judgment, when recovered, is conclusive of the fact that the heir has received assets to the amount for which it is rendered, and an execution may issue upon it as in case of any other judgment *in personam*.

Overruled: *Blinn v. McDonald*, 92 T. 604 (46 S. W. 787, 48 S. W. 571, 50 S. W. 931).

The heirs are not liable *personally* to the creditors for any amount. The fact that they have received property from their ancestor does not subject them to personal liability, but they hold such property as they have received from the ancestor, subject to the general lien in favor of creditors, which may be enforced against it in their hands. It is doubtless true that the heirs would be personally liable to creditors, should they defeat the lien by disposing of the security to bona fide purchasers (46 S. W. 787).

NOTE.—There seems to be some doubt as the exact effect of the decision in *Blinn v. McDonald*. Judge Gill in *Middleton v. Pipkin*, 56 S. W. 242, discusses the matter and says: "The extent to which this doctrine (personal liability of the heirs) is modified or affected by the case of *Blinn v. McDonald*, is difficult to determine, but under our construction of the opin-

ion, it is only necessary in such a proceeding to sufficiently describe the property alleged to have passed to each heir sought to be held, in which event the lien which is then held to be given by the statute may be enforced against the property. Such lien, however, does not follow the property into the hands of a purchaser, and if it be shown that the heir has disposed of the property or so changed its form as to render it impossible of identification, a personal recovery can be had for its value. Whether the rule as announced in the cases first cited, or as declared in *Blinn v. McDonald*, be the true one, the result would seem to be the same. In either event the heir would be entitled to a sufficiently accurate description to put him upon notice of the character and value of the property he is alleged to have received. If it should appear that it had been disposed of by the heir, he would clearly be liable for its value, the liability being based upon the wrong done in defeating the lien by disposing of the security. The question is thus resolved into one of pleading."

The supreme court seems to have thought the difference was more than one of pleading. Under its construction of *Mayes v. Jones*, and similar cases, they hold that the creditor had no lien whatever on the property received by the heirs and cases might arise where the property would be exempt in the hands of the heirs even though a personal judgment should be obtained against them. Thus an heir might receive 200 acres of land from the ancestor, and occupy it as his homestead, and if he is only liable personally, to the extent of the value of the property so received, and there is no lien thereon in favor of the creditor, the property could not be subjected to the debt. Judge Denman, in closing the main opinion in 46 S. W. 787, says: "Under the principle of that decision (*Mayes v. Jones*), the eight heirs of Mrs. Mayes might each have occupied as his home 200 acres of land inherited from her, and thus have exempted from the claims of her creditors, 1,600 acres."

If it was the intention of the supreme court to go to this extent in these cases, then certainly, the rule laid down in *Blinn v. McDonald* is the more salutary one. There are expressions in *Mayes v. Jones*, and *Kauffman v. Wooters*, that would lead to such a conclusion, but it may be doubted if they ever intended to hold, in any of these cases, that the creditor had no lien whatever; to the writer, it seems what they had in view was that "no creditor has a lien on any specific property, but there is a general lien, so to speak, in favor of all the creditors, upon all

of the property from which these debts were to be discharged *pro rata* or in accordance with their rights of profit, if any exist." *Moore v. Moore*, 89 T. 33 (33 S. W. 217). However this may be, it is clear that under the law as now settled by *Blinn v. McDonald*, where a debt of the ancestor is sought to be collected otherwise than through administration on his estate, it is necessary to describe the property received by the heirs and subject it, in their hands, to the lien of the creditor and if the heirs have disposed of the property to a bona fide purchaser, it should be so alleged and recovery be sought against them for defeating the lien.

In accord with *Mayes v. Jones*, see *Kauffman v. Wooters*, 79 T. 205 (13 S. W. 549); *Low v. Felton*, 84 T. 378 (19 S. W. 693); *Webster v. Willis*, 56 T. 468 (the last two cases decided under different statutes); *McC Campbell v. Henderson*, 50 T. 601.

In accord with *Blinn v. McDonald*, see *French v. Grenet*, 57 T. 273; *Northcraft v. Oliver*, 74 T. 162 (11 S. W. 1121); *Moore v. Moore*, 89 T. 29 (33 S. W. 217); *Ehrenworth v. Putnam*, 55 S. W. 190.

Under the law as now established by *Blinn v. McDonald*, a suit against the heir and to subject the land received by him to the lien of the creditor, would have to be brought in district court, regardless of amount, while under the former rule, the judgment being only in personam, the suit would have been brought in the county court, when the amount was under \$500.

§ 330. *Meyer v. Mattes*, 37 S. W. (C. A.) 963.

Where the trial judge refused to make out a statement of facts because appellee's counsel had not presented him with a statement which he had promised, and the appellant's counsel had prepared a statement and done everything he could to obtain a statement of facts, the case was reversed with reference to merits of the appeal.

Questioned: *Guerquin v. McGown*, 53 S. W. (C. A.) 585.

Where a trial judge refuses to prepare and certify a statement of facts, it becomes the duty of the appellant to apply to the court of civil appeals for a mandamus to require him to do so. The case of *Meyer v. Mattes* is referred to, and the court says that in that case "the general rule is properly stated, but that facts stated in the opinion do not seem to sustain it."

NOTE.—*There seems to be no conflict as to what is the true rule, viz.: Where there is nothing to indicate that the trial judge will not perform his duty within the statutory time, and the appellant does all in his power to obtain a properly authenticated statement, a reversal will follow without a statement of facts, but when the trial judge refuses, within the statutory time, to prepare or file the statement, then it becomes the appellant's duty to apply to the court of civil appeals for a mandamus. Hilbum v. Preston, 32 S. W. 702; Strickland v. Sandmeyer, 21 C. A. 351 (52 S. W. 87). See cases cited in Guerguin v. McGown, supra, and Walton v. Prigmore, 51 S. W. 352.*

**§ 331. Middlebrook v. Bradley Mfg. Co., 86 T. 706
(26 S. W. 935).**

The maker of two notes, only one of which names a place of payment, may be sued on both notes, in the court where said note is payable, and can not plead his privilege to be sued at his residence on the other note.

Contra: First National Bank of Crockett v. East, 17 C. A. 176 (43 S. W. 558).—Writ of error denied.

Where a court has jurisdiction over a defendant to determine one cause of action, it does not thereby acquire jurisdiction over him, notwithstanding his plea of privilege, on another cause of action, over which it would have no jurisdiction independent of the first cause.

§ 332. Miller v. Goodman, 40 S. W. (C. A.) 743.

In a suit by a foreign corporation, the burden is on the defendant to allege and prove that the plaintiff company did not have a permit to do business in Texas.

Contra: Taber v. Interstate B. & L. Ass'n, 91 T. 92 (40 S. W. 954).

The obtaining of a permit from the state is a condition precedent to a foreign corporation's right to do business within the state, and that fact must be both alleged and proved to entitle it to a judgment.

NOTE.—*The case of Miller v. Goodman was certified to the supreme court on the question as to whether it was necessary for the plaintiff (the assignee of a foreign corporation) to allege and prove that such corporation had a permit. The su*

preme court answered in the negative, because the transaction in that case was one of interstate commerce and did not consider the question of pleading. 40 S. W. 718.

See § 518.

§ 333. *Milligan v. Weatherford*, 54 T. 388.

The district court has original jurisdiction to try the right to an office of mayor of an incorporated city, when such office is of the value of five hundred dollars.

Contra: *Dean v. State*, 88 T. 290 (30 S. W. 1045, 31 S. W. 185).

See *Bell v. Faulkner*, § 21.

§ 334. *Millington v. Railway, 2 W. & W.*, sec. 171.

In a suit against a railway company, to 'recover damages for failure to deliver certain household goods shipped by plaintiff over defendant's line of road, where the contract of shipment was evidenced by writing, signed by the company's agent; *held*, that the suit is one to recover damages resulting from a breach of contract and is not founded upon tort. That the two years' statute of limitation was not applicable in this case.

Overruled: *Ft. Worth & D. C. Ry. v. McAnulty*, 7 C. A. 328 (26 S. W. 414).

A petition alleging that the defendant railway company contracted to transport plaintiff's cattle to Chicago safely and expeditiously, but that it failed to provide suitable cars and ran its car negligently, whereby the cattle became sick and greatly depreciated in value, states a cause of action which is essentially one *ex delicto*, and is an action of trespass for injury to property within the meaning of Revised Statutes, article 3202, providing that such actions must be brought within two years after the cause of action shall have accrued.

NOTE.—*Bear v. Max*, 63 T. 298; *Railway v. Levy*, 59 T. 542; *Railway v. Roerner*, 1 C. A. 191 (20 S. W. 843); *Campbell v. Trimble*, 75 T. 270 (12 S. W. 863); *Hill v. Kimball*, 76 T. 216 (13 S. W. 59).

§ 335. *Mills v. Hackett*, 65 T. 580.

A person, by becoming a surety on a replevin bond, becomes a party to the suit, and is liable to have costs of the suit adjudged against him.

Contra: Henderson v. Brown, 16 C. A. 464 (41 S. W. 406).
—Writ of error denied.

The sureties on a replevin bond, in a suit of trespass to try title, under Revised Statutes, article 4875, are not liable for the costs of suit.

NOTE.—Following Henderson v. Brown, see Zimmerman v. Pearson, 18 C. A. 331 (51 S. W. 523).

§ 336. Miner v. Gose, 1 W. & W., sec. 73.

An appeal from a judgment of a justice of the peace, being the regular method prescribed by statute for effecting the revision of errors in that tribunal, the petition for certiorari must allege a sufficient excuse for not appealing.

Contra: Hail v. McGail, 1 W. & W., sec. 852.

The remedy by certiorari is independent of the one by appeal, and additional thereto. It would often defeat the remedy entirely to require that an appeal should be resorted to, or good cause shown why it is not resorted to, before a party would be allowed to avail himself of the remedy by certiorari.

NOTE.—The cases of Cotton v. Gammon, 4 T. 83, and Maze v. Lewis, 4 T. 5, are in accord with the Miner v. Gose, but were practically overruled by the case of Ray v. Parsons, 14 T. 374. See King's Conflicting Cases, vol. 1, secs. 62 and 134. Also cases of Ward v. McRimmond, 12 T. 314; Poag v. Roe, 16 T. 591; and More v. Hardeson, 10 T. 472, which support Hail v. McGail.

The overwhelming weight of authority now is in favor of the principle that the petition for certiorari need not show an excuse for not taking an appeal.

§ 337. M. K. & T. Ry. Co. v. Hines, 40 S. W. (C. A.) 152.

In an action by a wife for the death of her husband, the measure of her damages is the probable amount he would have contributed to her support if he had not been killed.

Contra: Ft. Worth & D. C. Ry. Co. v. Morrison, 93 T. 527 (56 S. W. 745).

See G. H. & S. A. Ry. v. Hughes, § 154, and note.

§ 338. M. K. & T. Ry. v. Lyons, 53 S. W. (C. A.) 96.

Although a petition fails to allege that amounts expended for physician's services and for medicines were *reasonable*, it

was not error for the court in its charges to instruct the jury to allow for such reasonable expenses where no objection was made to the evidence touching such matter.

Contra: M. K. & T. Railway v. Bellew, 54 S. W. 1079.

It is essential to prove the *reasonable* value of amounts expended for medicines and physician's services.

NOTE.—A writ of error was refused in *Railway v. Lyons*, and doubtless the supreme court did not consider that it conflicted with the rule laid down by it. It is difficult, however, to reconcile the two cases, because, if it is necessary to prove the reasonableness of such charges, it would seem necessary to allege it, and it has uniformly been held that evidence without pleading can not support a cause of action.

§ 339. M. K. & T. Ry. Co. v. Wickham, 44 S. W. 1024.

A plaintiff may establish title by limitation without specially pleading it.

Contra: Molino v. Benavides, 60 S. W. (Sup.) 875.

Here the supreme court, while holding the question not before it for decision, intimates its approval of the contrary rule.

See notes to *Mayers v. Paxton*, § 328, and *Curlin v. Hendricks*, § 98.

§ 340. M. K. & T. Ry. Co. v. Wood, 35 S. W. (C. A.) 879.

A brakeman can not recover for injuries sustained, while coupling cars, by reason of a defective roadbed, if he knew of such defective condition, or would have known of it had he exercised due and proper caution—such caution as a man of ordinary prudence would exercise under like circumstances.

Contra: M. K. & T. Ry. Co. v. Hanning, 91 T. 347 (43 S. W. 508).

When a servant enters the employment of the master he has a right to rely upon the assumption that the machinery, tools, and appliances with which he is called upon to work are reasonably safe, and that the business is conducted in a reasonably safe manner. He is not required to use ordinary care to see whether this has been done or not. He does not assume the risks arising from the failure of the master to do his duty, unless he knows of the failure and the attendant risks, or in the ordinary discharge of his own duty, must necessarily have ac-

quired the knowledge.

See §§ 250 and 404.

§ 341. *Mo. Pac. Ry. Co. v. Hennesey*, 75 T. 155
(12 S. W. 608).

Evidence of improvement made in appliances and mode of operating a railroad, after an accident, should not be received as evidence of former negligence.

Questioned: *Texas & Pac. Ry. Co. v. Gay*, 88 T. 111 (30 S. W. 543).

See *G. C. & S. F. Ry. Co. v. McGowan*, § 184.

§ 342. *Mo. Pac. Ry. Co. v. Lee*, 70 T. 496 (7 S. W. 860).

In a suit by a parent for the death of a son, plaintiff is entitled to recover (in addition to services during minority, medical bills, etc.), a sum equal to the pecuniary benefit he had a reasonable expectation of receiving from the child, had he not died.

Overruled: *Railway v. Morrison*, 93 T. 527 (56 S. W. 745).

The true measure is the present value of such pecuniary benefit—such a sum as paid now will be fair compensation.

NOTE.—See full discussion in note under *Railway v. Hughes*, § 154.

§ 343. *Mo. Pac. Ry. Co. v. Scott*, 78 T. 360 (14 S. W. 791).

On appeal, it appeared from the record that, in a suit against two defendants, a judgment was rendered in favor of plaintiff against only one of the defendants, and no disposition as to the other defendant. The cause was dismissed; after dismissal, the plaintiff (the appellant) filed a motion for a certiorari to perfect the record. *Held*, that the motion could not be allowed after the appeal had been dismissed.

Contra: *W. U. Tel. Co. v. O'Keefe*, 87 T. 423 (28 S. W. 945).

See *McMickle v. Texarkana National Bank*, § 318.

§ 344. *Missouri Pac. Ry. Co. v. Sherwood*, 84 T. 125
(19 S. W. 455).

In this case, while the supreme court held the shipment to be interstate, it used the following language which was not in fact, necessary to the decision of the case, viz.: "Our attention is called by appellees, in support of their proposition al-

ready stated, to the case of *Heiserman v. Railway*, 63 Iowa 732. In that case, while it is true that goods shipped at West Union, Iowa, were destined for Milwaukee, Wisconsin, the contract of the carrier was to transport them from West Union to Pottsville, Iowa, and no further. The goods under the contract with the carrier were to be transported and delivered at Pottsville, where the freight for such transportation was to be paid to the carrier. This was plainly a domestic shipment, the carrier not having contracted to carry the goods or to have them carried to Milwaukee."

Contra: *Houston Direct Nav. Co. v. Ins. Co. of North America*, 89 T. 1 (32 S. W. 889).

In this case, cotton was delivered to the Houston Direct Navigation Company at Houston, for shipment to New York and Liverpool, but the bills of lading provided that the Navigation company's liability should cease and the contract be fully executed and accomplished as soon as it should deliver the cotton to the Mallory line at Galveston. Part of the cotton was destroyed by fire before delivery to the Mallory line. *Held*, that the trip from Houston to Galveston was simply part of a continuous voyage and the cotton was interstate commerce from the beginning of the trip at Houston, notwithstanding the navigation company gave a bill of lading to Galveston only, and the freight charges were paid to that point.

The quotation from *Railway v. Sherwood* is referred to as *obiter dicta*, and disapproved.

See § 399.

§ 345. *Mo. Pac. Ry. Co. v. Tague*, 2 W. & W., sec. 780.

Surviving widow can not sue alone for damage done to the homestead or crop growing thereon, and the children of the deceased husband are necessary parties to the action.

Overruled: *G. C. & S. F. Ry. Co. v. Jones*, 3 W. & W., sec. 15.

The surviving widow, as the head of the family, is entitled, during her lifetime, to the exclusive possession and enjoyment of the homestead, and may maintain in her own name and right an action to recover damages to such homestead or the crop growing thereon; and although there may be surviving children of the deceased, they are not necessary parties to such suit.

NOTE.—*I. & G. N. Ry. Co. v. Timmerman*, 61 T. 680; *T. & P. Ry. Co. v. Levi*, 59 T. 674; *St. Louis A. & T. Ry. Co. v. Ticer*, 3 W. & W., sec 402; *Railway Co v. Medaris*, 64 T. 92; *T. & N. O. Ry. Co. v. Oates*, 2 W. & W., sec. 618; *T. & St. Louis Ry. Co. v. Reid*, 1 W. & W., sec. 296.

§ 346. Moon Bros. Carriage Co. v. Waxahachie Grain & Imp. Co., 35 S. W. 337.

While an insolvent corporation holds its assets as a trust fund for the benefit of all creditors, and can not, by its own act, create a preference, such rule does not operate to prevent a creditor from pursuing the remedies given him by statute for the collection of his debt, and he may obtain a valid preference by attachment or otherwise.

Contra: *Orr & Lindsey Shoe Co. v. Thompson*, 89 T. 501 (35 S. W. 478).

See *Harragan v. Quay*, § 201.

§ 347. Moore v. City of Waco, 85 T. 206 (20 S. W. 61).

A city may hold land appropriated by it for public streets adversely to the owner. The ordinary uses of a public street should be regarded as such adverse possession. But to enable it to acquire title by limitation, the city must show that the terms of the statute have been complied with in other particulars, including the record of its deeds and *the payment of state and county taxes*.

Limited: *United States v. Schwabley*, 29 S. W. (C. A.) 90.

Where land is exempt from taxation, the occupant is relieved from payment as a requisite defense, under the five years' statute of limitation.

"The decision of *Moore v. Waco* was rendered, doubtless, in view of the fact that all of the property of municipal corporations is not exempt from taxation and they should be required to allege and prove either that the taxes had been paid, or that it was a species of property on which no taxes were laid.

NOTE.—The principle announced in *United States v. Schwabley* was approved by the supreme court, on application for writ of error. See 87 T. 604. It would seem, however, that the supreme court would have taken notice, in *Moore v. Waco*, that property used by a city for a public street is not subject to taxation.

§ 348. **Moore v. Johnson**, 67 T. 394 (3 S. W. 317).

When a cause is tried in the district court, on appeal from the justice's court, and when the transcript from the justice's court shows affirmatively that there were no pleadings made by the defendant, it was error to hear evidence of proof of payment of the debt, for which the defendant was sued.

Criticised: **Ostrom v. Tarver**, 29 S. W. 69.

The position of the supreme court in the case of **Moore v. Johnson**, where they in effect hold that the transcript from the justice's court must show that the defendant pleaded to the plaintiff's cause of action before he can be allowed on appeal to prove his defense, is untenable.

NOTE.—*The following authorities are in support of the criticised case:* **Mass v. Solinsky**, 67 T. 290 (3 S. W. 289); **First Natl. Bank v. Pritchard**, 2 W. & W., sec. 132.

The following decisions are in accord with the criticising case: **Rush v. Lester**, 2 W. & W., sec. 442; **Machine Co. v. Slover**, 4 W. & W., sec. 236; **Harrison v. Ry. Co.**, 4 W. & W., sec. 69.

See **Ostrom v. Tarver**, § 362.

§ 349. **Morris & Cummings v. State of Texas**, 62 T. 728.

A county attorney may institute proceedings by quo warranto in the name of the state to oust one from the exercise and enjoyment of a franchise not authorized by law.

Overruled: **State v. I. & G. N. Ry. Co.**, 89 T. 562 (35 S. W. 1067).

The revised statutes of 1895, article 4343, in so far as it attempts to confer on district and county attorneys authority to institute proceedings in the nature of quo warranto in the name of the state against a private corporation, exercising power not conferred by law, contravenes article 4, section 22, authorizing the attorney-general to bring such proceeding, and therefore, the attorney-general alone is authorized to bring such proceedings.

§ 350. **Morris v. Runnells**, 12 T. 175.

The admission of a fact in defendant's answer dispenses with proof of that fact by the plaintiff.

Limited: **Silliamn v. Gano**, 90 T. 637 (39 S. W. 559, 40 S. W. 391).

When a fact alleged in the petition is denied, either generally or specially, by the defendant in his answer, the plaintiff must prove it, although the defendant may in another plea aver the same fact. See *Bauman v. Chambers*, 41 S. W. 471, where *Morris v. Runnells* is referred to and the ruling approved on the ground that the general denial had been abandoned in that case.

The rule as established by the later cases is, that where an answer contains a general denial, then the plaintiff is put to the proof of facts alleged by him, even though they may be admitted in other portions of the defendant's answer.

§ 351. *Mulberger v. Morgan*, 47 S. W. 379.

Where the plaintiff sues as assignee of a negotiable instrument, under a written indorsement purporting to have been executed prior to its maturity, he is presumed to have paid a valuable consideration and bought without notice of the failure of consideration set up by the defendant, and the burden rests upon the latter to show that the plaintiff did not pay a valuable consideration, or if he did, that he had notice of the defense interposed by the defendant.

Qualified: *Hart v. West*, 91 T. 184 (42 S. W. 544).

Where an indorsee sues upon a negotiable instrument, and the defendant avers that the paper was put in circulation fraudulently, and this is shown to be the case by the proof, then the presumption that the indorsee is an innocent holder can not be indulged, and the burden of proving that he acquired the paper before maturity in ordinary course of business, for a valuable consideration, rests upon him.

NOTE.—*Newton v. Newton*, 77 T. 508 (14 S. W. 157); *Hermann v. Gunter*, 83 T. 66 (18 S. W. 428); *Blum v. Loggins*, 53 T. 121; *Rische v. Banks*, 84 T. 413 (19 S. W. 610).

§ 352. *Munnink v. Jung*, 3 C. A. 395 (22 S. W. 293).

See description held too indefinite to pass title.

Contra: *Herman v. Likens*, 90 T. 448 (39 S. W. 282).

See *Brown v. Chambers*, § 40; *Focke v. Garcia*, 41 S. W. 187.

§ 353. *Murphy v. Menard*, 14 T. 62.

Where five years having elapsed since the opening of ad-
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ministration, and no order made or account rendered, the presumption obtains that the debts against the estate were barred or paid, that the remaining assets belong to the heirs, and that the administration had been closed.

Overruled: Branch v. Hanrick, 70 T. 731 (8 S. W. 539).

When letters of administration have once been granted, no presumption is admissible which is contrary to the record, and the persons interested in the administration may proceed, after any lapse of time, to compel a settlement of the estate which does not appear from the record to have been closed.

NOTE.—The cases of *Portis v. Cummings*, 14 T. 139, and *Marx v. Hill*, 46 T. 345, are in accord with the overruled case. These decisions were, however, rendered prior to the act of August 15, 1870, which act was intended, as stated in *Branch v. Hanrick*, to abrogate the rule announced in those cases.

See § 326.

§ 354. *Mynatt v. Hudson*, 66 T. 66 (17 S. W. 396).

In this case, it was held admissible to impeach a witness, who has resided in Erath county for four years, by the testimony of residents of Johnson county, that his reputation for truth and veracity was bad in Johnson county, when he resided there. The impeaching witnesses had not known the impeached witness for four years.

Qualified: Brown v. Perez, 89 T. 287 (34 S. W. 725).

Here impeaching testimony as to a witness's bad character, for truth and veracity in the community in which he lived twenty-five or thirty years before the trial, was held admissible, but its admissibility was expressly placed by the court on the grounds that the character of the testimony of the impeached witness "the evident contradictions of himself, and the circumstances surrounding the transaction with which he was connected were such that they might be considered as impeaching his then character for truth and veracity. He had been absent from the state in a foreign country at different times during a period of near thirty years, not shown to have had at any time, any fixed place of abode, nor indeed at what point in Mexico he resided at any time, or whether at the same place for any given length of time."

In the case of *Mynatt v. Hudson*, supra, "the trial was had

in the county where the witness resided, and plaintiff could have summoned his neighbors who knew him at that time; nor was there any circumstances shown which made it necessary to resort to the former home and associates for evidence of his character." 89 T. 287 (34 S. W. 725).

Brown v. Perez, qualifies the first case and establishes the rule that "before resort can be had to a time remote from the trial, to impeach a witness, there must either be some evidence of the witness's bad character for truth near the time of the trial, or it must be shown that it is impracticable to make such proof. This proof may be furnished by the impeached witness's own testimony where it is such that it fairly raises the issue of his veracity, or by the testimony of other witnesses which tends to impeach his character for truth and veracity, at or near the time of trial." (89 T. 289.) After such testimony has been offered, the testimony as to reputation for truth and veracity of the witness seen at a very remote time (thirty years in *Brown v. Perez* case), is admissible.

NOTE.—In *Robbins v. Ginnocchio*, 45 S. W. 34, testimony as to a witness's reputation, in a county where he resided eighteen or nineteen years before the trial, held inadmissible. The case does not show the character of the witness's testimony, or whether other testimony as to his reputation at a time near the trial, was offered. Here too, the trial judge excluded the testimony and this was a matter largely in his discretion that will not be revised except when improperly exercised.

See *Brown v. Perez*, 89 T. 289 (34 S. W. 725).

§ 355. *New York Life Ins. Co. v. Smith*, 41 S. W. 680.

Article 3071, Revised Statutes 1895, providing that in all cases where loss occurs, and a life or health insurance company liable therefor fails to pay the same within the time specified in the policy after demand made, it shall be liable to the holder of such policy, in addition to the amount of such loss, for twelve per cent of the amount of such loss, together with all reasonable attorney's fees for the prosecution and collection of the same, is in violation of section 1, of the fourteenth amendment of the constitution of the United States, as discriminating against such companies.

Contra: *Fidelity & Casualty Co. v. Allibone*, 91 T. — (40 S. W. 399).

Article 3071, Revised Statutes 1895, is not violative of the provisions of the fourteenth amendment to the constitution of the United States.

NOTE.—See all the authorities contra, to *Insurance Co. v. Smith*, cited in *Justice Hunter's dissenting opinion*, in that case (41 S. W. 680).

§ 356. *Nones v. McGregor*, 35 S. W. (C. A.) 1083.

A bond, on appeal from justice court, that is payable to the appellees "or their certain attorneys," is fatally defective. *Contra*: *Brazoria Co. v. Grand Rapids School Fur. Co.*, 43 S. W. (C. A.) 900.

An appeal bond from justice court is not void because payable to the appellees "or their certain attorneys, executors, administrators, or assigns."

NOTE.—In accord with the latter case, see *Farror v. Dowd*, 28 S. W. (C. A.) 919, and *Engle v. Rowan*, 48 S. W. (C. A.) 757.

§ 357. *Norris v. Hunt*, 51 T. 609.

Some of the authorities sustain the proposition that there is greater reason to require that the description of land, levied upon and sold by an officer under process of law, should be reasonably certain, than in case of sales between private parties. In the former, it is generally an *ex parte* proceeding *in invitum*, and would often result in great hardship and sacrifice to the debtor if the land to be sold was not described with sufficient certainty to advise bidders of its locality and identity, but in the latter, the parties are presumed to have full knowledge of what was intended to be sold and purchased, although the subsequent deed between them might not fully describe the land.

Limited: *Hermann v. Likens*, 90 T. 449 (39 S. W. 282).

See *Brown v. Chambers*, § 40.

§ 358. *Northwestern Natl. Ins. Co. v. Mize*, 34 S. W. 670.

The provisions of an iron-safe clause in an insurance policy must be *strictly* complied with.

Limited: *Brown v. Palatine Ins. Co.*, 89 T. 590 (35 S. W. 1060).

In this case the "iron-safe clause" in the policy, required the insured to keep a set of books, showing all purchases and

sales and to keep them in a fireproof safe. The insured had kept a set of books in compliance with the requirements of the policy, except that the sales for the day on which the fire occurred had been kept on blotters, which were left out of the safe and destroyed by the fire. The trial court held that the insured had complied with the terms of his contract, but the court of civil appeals reversed the judgment and held, as a matter of law, that the omission to enter the sales of one day upon the books worked a forfeiture of the contract. The supreme court reversed the decision of the court of civil appeals and affirmed the judgment of the district court.

NOTE.—*Kelley-Goodfellow Shoe Co. v. Liberty Ins. Co.*, 8 C. A. 227 (28 S. W. 1027), and several others, are sometimes quoted as expressing a different rule from that laid down in *Brown v. Ins. Co.* (see *Kemendo v. Ins. Co.*, 57 S. W. 293), but a careful examination of these cases will show that in most of them no attempt had been made to comply with the iron-safe clause, while in the *Kelley-Goodfellow* case the jury found, under the charge of the court, that the insured had not complied with the provision. Justice Brown, in the case of *Brown v. Ins. Co.*, says the question as to whether the insured had complied with the warranty "was a question of fact, and the judge before whom the case was tried without a jury found, as a fact, that he had complied with the terms of his contract."

The *Brown* case does not hold that the explicit terms of an iron-safe clause will not be enforced, but merely that where language is such as to call for construction, it will be strictly construed against the insurer and liberally in favor of the insured, and, therefore, it could not be held, as a matter of law under the provisions of that contract, that a failure to enter the sales of one day worked a forfeiture thereof.

§ 359. *Northwestern Natl. Ins. Co. v. Mize*, 34 S. W. (C. A.) 670.

A waiver, by an insurance agent, of compliance by the insured with a warranty required by the policy, is not binding on the company, where the policy expressly prohibits agents from waiving the requirements of the warranty or compliance with its provisions.

Contra: *Wagner v. Westchester Fire Ins. Co.*, 92 T. 549, (50 S. W. 569).

In this case, the policy provided that it should be void if

the interests of the insured were not truly stated therein, and by the express terms of the policy the agent was prohibited from waiving this provision. It was admitted that the interest of the insured was not truly stated therein, but was claimed by the insured that the agent knew the true state of the title at the time of the issuance of the policy. The supreme court held that such notice was a waiver of the provision regardless of the limitation on the agent's authority. This case was before the court of civil appeals on a former appeal (30 S. W. 959), and it was there held that the agent could not waive the provision.

See *Notes to Phoenix Ins. Co. v. Dunn*, § 382, and *Fitzmaurice v. Ins. Co.*, § 131.

§ 360. Nunnally v. Taliaferro, 82 T. 286 (18 S. W. 149).

Where the excess in the verdict is not ascertainable by any rules of law, is uncertain and considerable, a remittitur should not be permitted.

Contra: *T. & N. O. Ry. Co. v. Syfan*, 91 T. 562 (44 S. W. 1064).

This decision is based on the amended statute (art. 1029a).

See *G. C. & S. F. Ry. Co. v. Coon*, § 177.

§ 361. Oldham v. Brooks, 25 S. W. (C. A.) 648.

The approval of a guardian's annual accounts are not final judgments, but the amounts included in such accounts may be contested on final settlement.

Limited: *Eastland v. Williams*, 92 T. 113 (46 S. W. 32).

A judgment of the county court allowing fees for an attorney employed by the guardian, is final and can not be contested when the guardian includes this item in his final account.

NOTE.—A close examination of these cases does not seem to show any conflict, but on account of the reference made in *Eastland v. Williams* to *Oldham v. Brooks*, and the construction given that opinion by the court of civil appeals in *Eastland v. Williams*, 45 S. W. 412, it seems proper to refer to them. The writer does not understand, however, that the supreme court holds the orders approving annual accounts of guardians are conclusive, unless appealed from, but simply that where a guardian has paid a claim which has been duly approved by the court this item can not be questioned on final settlement. It

is not the order approving the annual account, but the order approving the claim which precludes further inquiry as to such an item. Justice Brown, in fact, recognizes in his opinion in Eastland v. Williams that there are items which may be inquired into on final settlement, notwithstanding they have been included in an annual account approved by the court.

§ 362. *Ostrom v. Tarver*, 29 S. W. 69.

In cases of appeals from the justice court to the district or county court, they must be tried upon the same issues presented in the justice court, and amendments will not be permitted except for the purpose of more fully stating the cause of action or amplifying the defenses made in the lower court.

Contra: *White Dental Mfg. Co. v. Hertzberg*, 92 T. 528 (50 S. W. 122).

On appeal from a justice court to the county or district court, the original cause of action is to be tried as any other case when a judgment has been rendered and a new trial granted. The fact that the trial is to be *de novo*, implies that both the plaintiff and the defendant may amend their pleadings, but this applies only to the original case and does not give a right to make a new case by setting up a new cause of action, or pleading a counterclaim not pleaded in the lower court.

In this case, it was held that the illegality of the contract sued upon could be set up for the first time in the district court, on appeal from the justice court.

NOTE.—*There was, for some time, considerable conflict in the opinions of the courts of civil appeals on this question, and the question was finally determined by the supreme court in White Dental Mfg. Co. v. Hertzberg, supra, in favor of allowing any amendment on appeal that does not set up a new cause of action or plead a counterclaim not pleaded in the justice court.*

In accord with supreme court opinion, see Bennett v. Paine, 38 S. W. 398; *Slover v. Machine Co.*, 34 S. W. 1055; *Linnborn v. Johnson*, 24 S. W. 567; *Brigman v. Aultman*, 55 S. W. 509; *Harrold v. Barwise*, 30 S. W. 498; *Cerrey v. Terrill*, 1 W. & W., sec. 240; *Gohlston v. Rancy*, 30 S. W. 713; *Blanton v. Langston*, 60 T. 149; *Boudin v. Gilbert*, 67 T. 689 (4 S. W. 578); *Railway v. Jones*, 23 S. W. 424; *Num v. Edminston*, 29 S. W. 1115; *Railway v. Klepper*, 24 S. W.

567; *White v. Johnson*, 24 S. W. 568; *Dounstain v. Connelles*, 2 C. A. 95 (21 S. W. 56); *Railway v. Ivy*, 79 T. 444 (15 S. W. 692); *Mahoney v. Cope*, 27 S. W. 157; *Railway v. Dunn*, 26 S. W. 157; *Moore v. Harding*, 10 T. 467; *City of Dallas v. McAllister*, 30 S. W. 452.

The following cases are in accord with Ostrom v. Tarver: Rush v. Lester, 2 W. & W., sec. 442; *Railway v. Melear*, 2 W. & W., sec. 457; *Bridges v. Wilson*, 2 W. & W., sec. 625; *Davidson v. Horidam*, 3 W. & W., sec. 233; *Matula v. Fitzgerald*, 4 W. & W., sec. 70 (15 S. W. 644); *Harrison v. Railway*, 4 W. & W., sec. 69 (15 S. W. 643); *Machine Co. v. Slover*, 4 W. & W., sec. 236.

§ 363. *Overstreet v. Manning*, 67 T. 657.

By the word "creditors," as used in article 2549, Revised Statutes, relating to the reservations of title in chattel mortgages, is meant such creditors as have secured their liens by process of law.

Limited: Burkey & Gay Furniture Co. v. Sherman Hotel Co., 81 T. 135.

Every chattel mortgage, or lien on personal property, or reservation of any title or interest therein, intended as a security for the payment of the purchase money or other debt, is, when the vendee or mortgagor is given or allowed to retain possession of the property, void as to *lien creditors* of such vendee or mortgagor, with or without actual notice, unless such mortgage lien or reservation of title or interest in the property, for the purpose aforesaid, is in writing, duly approved or acknowledged and filed for record as required by law.

NOTE.—*The limiting case holds that facts before the court in Overstreet v. Manning, do not require a decision on that point and, therefore, should be limited accordingly. See following authorities in accord with the limiting case: Mar-sailles v. Pittmann*, 68 T. 624; *Livingston v. Wright*, 68 T. 706; *Block v. Latham*, 63 T. 414; *Sullivan v. Cleveland*, 62 T. 672; *Lazarus v. Bank*, 72 T. 354; *Brothers v. Mundell*, 60 T. 246; *Key v. Brown*, 67 T. 300; *Parlin v. Harrell*, 27 S. W. 1086.

§ 364. *Owens v. Levy*, 1 W. & W., sec. 409.

In appeal from justice court, the appeal bond must be for double the amount of the judgment and costs.

Contra: Yarbrough v. Collins, 91 T. 306; (42 S. W. 1052).
See *Bell v. Brown*, § 20.

§ 365. Oxsheer v. Watt, 42 S. W. (C. A.) 121; Id. 91 T. 402
(44 S. W. 67).

Where a note secured by a lien on property is payable in a different county from the residence of the maker, a party in possession of and claiming the property may be joined in a suit against the maker in the county where the note is payable, though neither of the defendants reside in that county.

Overruled: Behrens Drug Co. v. Hamilton, 92 T. 284 (48 S. W. 5).

The party claiming the property can not be joined in such a suit, neither he nor the maker of the note being residents of that county, and he not having obligated himself to perform any contract there.

NOTE.—See *Bingham v. Thompson*, § 29.

§ 366. Padgett v. Dallas Brick & Constr. Co., 51 S. W.
(C. A.) 529.

The constitution gives to persons furnishing material for a building, a lien thereon, and where the owner of the building has actual notice of such a claim, it becomes a lien on the building, although the notice has not been given in the time and manner prescribed by the statute.

Contra: Berry v. McAdams, 93 T. 952 (50 S. W. 1112).

The notice must be served *in writing* as required by statute.

See *Texas Bldrs. Sup. Co. v. Natl. L. & I. Co.*, § 460.

NOTE.—The supreme court refused a writ of error in *Padgett v. Const. Co.*, but doubtless because it was of the opinion that in that case a statutory lien had been fixed and that the written notice was in compliance with the statute, and evidently from its opinion in *Berry v. McAdams*, it did not intend to approve what the court of civil appeals said either with reference to materialmen's having a lien under the constitution independent of the statute, although they have no contract with the owner, or with reference to a notice in writing not being necessary.

See *Texas Bldrs. Sup. Co. v. Natl. L. & I. Co.*, § 460, and *DeLauney v. Butler*, § 366.

§ 367. *Page v. Payne*, 41 T. 143.

A suit brought for a balance due upon a bill of goods furnished on the written order of defendant, is not barred in two years from the accrual of the cause of action for the written order is the ground and foundation of the action.

Overruled: *Faires v. Cockrill*, 88 T. 428 (35 S. W. 190).

Cockrill, Faires and others executed a written obligation to the S. A. & A. P. Ry. Co., by which they agreed to secure right of way and depot grounds, and pay for the same, to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract and sued Faires and the other signers for their share of the money paid. *Held*, that the railway company could have maintained an action thereon, but Cockrill could not do so, for his cause of action was upon the implied promise of Faires and others to indemnify him for whatever he should pay in their behalf, and his action was barred by the statute of limitation of two years.

NOTE.—See note, *Sublett v. McKinney*, § 453.

§ 367a. *Pardue v. White*, 50 S. W. 591.

Act 1887, section 9, requires the commissioner of the general land office to prescribe regulations requiring purchasers of public lands to reside thereon for three consecutive years, and to make proof to him of such residence, whereupon, he shall issue to the purchaser a certificate showing that fact. *Held*, that a purchaser of lands can not question the validity or sufficiency of the proofs of occupancy of a prior purchaser after the commissioner has accepted them as sufficient.

Contra: *Thompson v. Hubbard*, 53 S. W. 841.

Since compliance with the statutory requirement, that a purchaser of state school lands shall purchase for himself and not for another, is one of the essentials to a valid title, a subsequent purchaser of the same land from the state is entitled to contest a prior purchaser's title, on the ground that such purchaser fraudulently acquired the land for the benefit of another.

NOTE.—It is true, the first case arose under the act of 1887, while the second case arose under the act of 1897. yet

the cases can not be distinguished upon this ground.

The case of Pardue v. White, is not the last case decided and as a writ was by the supreme court denied, it is believed to be the better law. When the state has parted with its title to one whom it deems qualified to purchase, no one but the state or a prior purchaser can complain. It does not lie in the mouth of a subsequent purchaser to say that the prior purchaser is not qualified to purchase, or that he has not occupied the premises for the statutory period. The case of Thompson v. Hubbard holds to the contrary, but can neither be supported by principle nor authority.

If the purchaser of school land, a pre-emptor or locator, brings suit against another for the land he claims before the state has issued a certificate of purchase or patent, then the burden is upon the plaintiff to show that he is qualified to acquire the land, and has performed all the prerequisites prescribed by law. But after the state has once parted with its title by issuance of certificate of purchase or patent, the law presumes that the holder has performed all the prerequisites, and in a suit against a subsequent purchaser or locator, he can not question or go behind the certificate or patent under which plaintiff claims.

The principle announced in the case of Pardue v. White is by analogy supported by all of the earlier cases. It has been held that individuals can not by location, assert any rights to lands previously granted, on the ground of forfeiture. Swift v. Herrera, 9 T. 280. A third party can not plead fraud in the procurement of a grant. Such objection can only be made by the government. Howard v. Colquhon, 28 T. 146. A grant can not be impeached, in an action between individuals, by evidence showing that the grantee had not brought his family to the country and had in fact, not been domiciled here. Johnson v. Smith, 21 T. 728; Brown v. Hicks, 22 T. 161.

When a colonist has received a patent to land in Texas of the amount authorized by law, it can only be successfully attacked by one who has an antecedent title. Lemberg v. Cabaness, 75 T. 229 (12 S. W. 844).

A colonial grant can not be impeached on the ground that it was forfeited by reason of the grantee's having left the country or by reason of non-performance of conditions subsequent. White v. Holliday, 11 T. 616.

Title issued to one as the head of a family can not be

impeached by showing otherwise. Smith v. Walton, 82 T. 551 (18 S. W. 217).

The decision of the officer, commissioner or tribunal authorized to issue titles is conclusive of the facts necessary to the grant. Griffin v. Foard, 60 T. 505.

§ 368. *Paris M. & S. P. Ry. Co. v. Nesbitt*, 33 S. W. 280.

In an action for the burning of plaintiff's lumber, there being conflicting evidence as to whether defendant's engine set the fire, it is error to charge that, if its engine caused the fire, the burden was on it to show that it used proper appliances, and operated its train properly.

Contra: Tyler S. E. Ry. Co. v. Hitchins, 63 S. W. 1069.

If plaintiff's property was destroyed by a fire caused by sparks from defendant's engine, then the burden was on the defendant to show that the spark arrester on the engine was in good condition, and that the train was properly handled.

NOTE.—*The following authorities support the second case above mentioned: Railway Co. v. Johnson*, 92 T. 591 (50 S. W. 563); *Railway Co. v. Timmerman*, 61 T. 660; *Ryan v. Railway Co.*, 65 T. 13; *Railway Co. v. Bartlett*, 69 T. 79 (6 S. W. 549); *Railway Co. v. Benson*, 69 T. 407 (5 S. W. 822); *Railway Co. v. Horne*, 69 T. 643 (9 S. W. 440); *Campbell v. Goodwin*, 87 T. 273 (28 S. W. 273); *Railway Co. v. Levine*, 87 T. 437 (29 S. W. 466); *Railway Co. v. McDonough*, 1 W. & W., sec. 651.

§ 369. *Parker v. Coop*, 60 T. III.

A deed was made to the wife during coverture, and recited that the purchase money was paid by her, but there was nothing in the deed showing that the purchase money paid was the separate means of the wife, or that the land was conveyed to her as separate property. *Held*, that the recital was not sufficient to put the purchaser upon inquiry that the consideration paid was the wife's separate estate.

Limited: Montgomery v. Noyse, 73 T. 203 (11 S. W. 138).

See *Kirk v. Navigation Co.*, § 273.

§ 370. *Parks v. Young*, 75 T. 278 (12 S. W. 986).

A second action can not be maintained upon a judgment that is not dormant.

Overruled: Stevens v. Stone, 60 S. W. (Sup.) 959.

Where a second judgment may be in any respect more available than the first, the action should be allowed. The proposition announced in Parks v. Young, is clearly erroneous.

NOTE.—*The case of Stevens v. Stone was one where the judgment plaintiff desired to reach property of the debtor in the Indian Territory, but owing to the lapse of time since the rendition of the judgment in this state, it was not available, there as a cause of action. Executions had been issued on the judgment in this state to prevent its becoming dormant, and the trial court held that no second action could be maintained thereon. The supreme court, reversed this ruling, and held that the action could be maintained, because, while the judgment was not dormant and, therefore, there would be no necessity for another judgment to subject property in this state, yet as the first judgment was not available as a cause of action in the Indian Territory, and a second one would be, the plaintiff gained an advantage by the second judgment and, therefore, was entitled thereto.*

Judge Gaines, in his opinion in the last case, admits that the great weight of authority is to the effect that a second action may be maintained on a judgment without alleging or showing any advantage to be gained by the second recovery, but says our supreme court is inclined to hold that some advantage must be shown before a second recovery can be had.

§ 371. Parsons v. Keys, 43 T. 557.

While infants are liable for necessities, they are not liable on their contract for a price certain, or on a bill or a note for the amount.

Limited: Asky v. Williams, 74 T. 294 (11 S. W. 1101).

We apprehend the better doctrine to be that an infant may make an express written contract for necessities upon which he may be sued, but that by showing the price agreed to be paid was unreasonable he can reduce the recovery to a just compensation for the necessities received by him.

This point was not involved in Parsons v. Keys.

NOTE.—*See Peck v. Cain, 63 S. W. 177.*

§ 372. *Peace v. First Christian Church*, 20 C. A. 85
(48 S. W. 534).

Property dedicated to the support of a particular church becomes a trust for the support of the particular doctrine taught by that church at the time of the dedication, and the members of the church, however small the minority, who adhere to such doctrine, are entitled to the property as against those who depart therefrom.

Overruled: *First Baptist Church v. Fort*, 93 T. 215 (54 S. W. 892).

In the case of schism in such a congregation, no inquiry can be had into the existing religious opinions of those who comprise the legal or regular organization; the proper inquiry is, which of the two factions constitutes the church, and those who adhere to the acknowledged organization are entitled to the use of the property, whether adhering or not to the doctrines originally professed.

§ 373. *Pearson v. Flannagan*, 52 T. 266.

Each error assigned should contain a distinct ground for reversal of the judgment, with the specification of the reason why it should be reversed, and should be copied, or substantially stated in the briefs.

Overruled: *Clarendon Land & Cattle Company v. McClelland*, 86 T. 179 (23 S. W. 536).

Where an assignment of error is sufficiently specific to enable the court to see that a particular ruling is complained of, it should be held good, although it should fail to state the reason why such ruling is claimed to be erroneous. An assignment may be brief and yet specific, and brevity in such a case is commendable and accords with good practice. The reason by which allegations of error are sought to be sustained find their proper place in the propositions, statements, and authorities required to be set forth in the brief, under and in support of the respective assignments.

NOTE.—*Earle v. Thomas*, 14 T. 583; *Harper v. Stroud*, 41 T. 367; *Norwood v. Cobb*, 20 T. 588; *Hillebrant v. Brewer*, 5 T. 566; *Allen v. Stephanes*, 18 T. 658; *Howard v. Colquhoun*, 28 T. 134; *Cotton Press Co. v. McKellar*, 86 T. 694 (26 S. W. 1056); *Robertson v. Coates*, 1 C. A. 665 (20 S. W. 875); *Lamberg v. Williams*, 2 C. A. 415; *McBee v.*

Johnson, 45 T. 634; *Randall v. Carlisle*, 59 T. 69; *Railway Co. v. Shafer*, 54 T. 641; *Roy v. Bremond*, 22 T. 626; *Trammel v. McDade*, 29 T. 360; *Clements v. Hearne*, 45 T. 415; *Greene v. Dallahan*, 54 T. 281; *H. & T. C. Ry. Co. v. McNamara*, 59 T. 255; *Yoe v. Montgomery*, 68 T. 338 (4 S. W. 622); *Thompson v. Thompson*, 12 T. 327; *Sims v. Chance*, 7 T. 561.

§ 374. *Piegzer v. Twohig*, 37 T. 225.

A purchaser of land, by executory contract, sued his vendor for specific performance, alleging partial payment of the purchase money and tendering the balance. The defendant answered that some of the payments were made in confederate money and therefore void, and asked a judgment for the full amount of the purchase money and a prayer for general relief. *Held*, that the prayer for general relief did not warrant the court below in decreeing a foreclosure, against the plaintiff, of the defendant's vendor lien.

Overruled as Dicta: *Morris v. Holland*, 10 C. A. 474 (31 S. W. 690).

In an action to rescind a sale of land made to a minor, where the facts showed the plaintiff to be entitled to foreclosure of his lien for the purchase money paid by him, a prayer for the recovery of the purchase price and for "all other and further relief in law or equity to which he is entitled by reason of the premises," is sufficient to warrant a decree of foreclosure. The decision to the contrary, in the case of *Piegzer v. Twohig*, was not necessary to the decision of the case.

NOTE.—*Garrett v. Bank*, 79 T. 133 (15 S. W. 224); *Fowler v. Stoneium*, 11 T. 477.

§ 375. *Pelican Ins. Co. v. Troy Co-Operative Ass'n*, 77 T. 225 (13 S. W. 980).

In a suit upon a policy of insurance, it is incumbent upon the plaintiff to allege and prove that the loss did not occur from any of the excepted causes.

Overruled: *Burlington Ins. Co. v. Rivers*, 28 S. W. 453.

See *Pheonix Ins. Co. v. Boren*, § 380.

§ 376. *Perryman v. Reyburn*, 30 S. W. (C. A.) 915.

A judgment entered in favor of the firm of Lanier Bros.

& Co., without giving the names of the partners, is a valid judgment and the executions in the same firm name are valid. *Contra*: Frank v. Tatum, 87 T. 204 (25 S. W. 409).

In this state, a co-partnership is not considered a person, and must sue and be sued by its members. Partnerships are not invested with any of the characteristics of corporations, nor are they expressly or impliedly authorized to sue or be sued in their firm names, independently of their members. No judgment can be entered against partnerships, as such.

NOTE.—See *Houghton v. Puryear*, 30 S. W. 583, following *Frank v. Tatum*.

§ 377. *Petty v. Lang et al.*, 81 T. 238 (16 S. W. 999).

Under Revised Statutes 1879, article 1192, providing that "pleadings may be amended under leave of the court upon such terms as the court may prescribe before parties announce ready for trial and not thereafter," it is error for the trial court to permit an amendment after announcement.

Contra: *Dublin v. Taylor B. & H. Ry. Co.*, 92 T. 535 (50 S. W. 120).

The amendment of pleadings during the trial is a matter within the discretion of the trial court, and the supreme court has no power to revise its action in the premises.

NOTE.—In accord with *Dublin v. Railway*, see *King County Land & Live Stock Co. v. Thompson*, 51 S. W. 890; *Tel. Co. v. Bowen*, 84 T. 476 (19 S. W. 554); *Hurd v. Texas Brewing Co.*, 51 S. W. 883; *Radam v. Microbe Destroyer Co.*, 81 T. 122; *Whitehead v. Foley*, 28 T. 1; *Parker v. Spencer*, 61 T. 155; *Greely Burnham Grocery Co. v. Carter*, 30 S. W. (C. A.) 487.

§ 378. *Petty v. Miller*, 5 C. A. 308 (24 S. W. 330).

Where an appeal from a justice of the peace has been perfected by service of the notice of appeal, and the execution and filing in the district court of a proper appeal bond, the justice's failure to make out and transmit to the district court a transcript of his record, before the first day of the second term next succeeding the rendition of judgment, as required by Sayles Civil Art., articles 1639-1641, is not ground for dismissing the appeal.

Contra: Davis v. Am. Freehold L. M. Co., 12 C. A. 37 (33 S. W. 271).

An appeal to the district court from a judgment of the county court, is properly dismissed where the county clerk, instead of transmitting the transcript to the first, or, in any event, to the second, succeeding term of the district court, as required by Revised Statutes, articles 2204, 2205, allows four terms of said court to intervene, and the only excuse appellant shows for failing to compel the clerk by mandamus to perform his duty therein is, that the latter repeatedly promised that he would do so.

NOTE.—*Campbell v. Bechsenhutz*, 25 S. W. 971; *T. & P. Ry. Co. v. Dyer*, 2 W. & W., sec. 312; *Jones v. Spann*, 3 W. & W., sec. 284; *Foos Mfg. Co. v. Prather*, 4 W. & W., sec. 131; *G. C. & S. F. Ry. Co. v. Connerly*, 4 W. & W., sec. 207; *Ball v. Lowell*, 56 T. 579; *Broadway v. Clepper*, 1 W. & W., sec. 306; *King v. Lacy*, 4 W. & W., sec. 255.

The correct practice is announced in Jones v. Spann, and is supported by both reason and authority.

§ 379. *Peveler v. Peveler*, 54 T. 53.

A defendant, whose place of residence was described in the petition as being in a different place from that in which the suit was brought, filed his plea to the jurisdiction and afterwards, at the same term, procured a continuance of the cause without asking the judgment of the court on his plea; on the trial, the court refused to submit to the jury the issue as to jurisdiction. *Held*, there was no error, whether the court treated the plea as filed out of due order of pleading, or whether it regarded it as waived by the continuance of the case without invoking an action thereon.

Limited: *Howeth v. Clark*, 4 W., sec. 314 (19 S. W. 433).

A plea in abatement was the only defense filed in a cause; it was filed in the justice's court at the proper time, and there sustained. It was amended in the county court, and when the cause was continued by counsel, it was for the purpose of trying this issue, and none other. *Held*, that to hold that defendant, by agreeing to try his cause at a later term, lost the right to try at all, is carrying the rule of practice to an extent unauthorized by any decision of the court of appeals or of the supreme court of this state.

NOTE.—The following cases are in accord with *Peveler v. Peveler*; *Gree v. Brown*, 4 W., sec. 162; *Turman v. Hern- don*, 3 W., sec. 215.

§ 380. *Phoenix Ins. Co. v. Boren*, 83 T. 97 (18 S. W. 484).

In a suit upon a fire insurance policy, the plaintiff is required to allege that the fire was not the result of a cause for which the company had expressly refused to be liable.

Overruled: *Burlington Ins. Co. v. Rivers*, 9 C. A. 177 (28 S. W. 453).

In an action on a fire insurance policy, providing that the company shall not be liable for loss from certain causes, the petition need not allege that the loss was not the result of any of such causes.

NOTE.—There seems to have been no application for a writ of error in *Ins. Co. v. Rivers*, but in the later case of *Hartford Ins. Co. v. Watt*, 39 S. W. 200, the same ruling was made and in this case the supreme court refused a writ of error.

See § 375.

§ 381. *Philipowski v. Spencer*, 63 T. 604.

Generally, a judgment is not conclusive of any matter, if the matter be not such that it had, of necessity, to be determined before the judgment of the court could have been given. *Contra:* *Rackley v. Fowlkes*, 89 T. 614 (36 S. W. 77).

Where an issue is presented by the pleadings, the judgment will be construed to have decided such issue, unless it can be shown that before its rendition such issue was withdrawn or that the court refused to decide it.

Where the pleadings put in issue the plaintiff's right to recover upon two causes of action and the judgment awards him a recovery upon one but is silent as to the other, such judgment is prima facie an adjudication that he was not entitled to recover upon such other cause.

NOTE.—The rule quoted from *Philipowski v. Spencer* was not really called for in the decision of that case and is dicta, because, there the question was one as to the separate property of the wife in a sale for her husband's debt, the purchaser at that sale having sued in trespass to try title. She had sought to enjoin the sale, but the temporary injunction

had been dissolved because of insufficient averments in her bill to entitle her to equitable relief. It was held that the plea setting up this judgment was bad because it did not allege that there had been a trial on the merits.

See *Freeman v. McAninch*, 87 T. 132 (27 S. W. 97), where Chief Justice Stayton has cited a great number of cases on this subject.

The cases of *Cook v. Burnley*, 45 T. 115, and *Horton v. Hamilton*, 20 T. 611, are frequently cited as contrary to the rule expressed in *Freeman v. McAninch*, but Chief Justice Stayton says they do not hold to the contrary, and an examination of these cases will show that they do not.

In *Cook v. Burnley*, 45 T. 97, a judgment had been rendered against Cook for title to the land in controversy, in the federal court, but after the rendition of that judgment he had made a compromise with the agent of the Burnley heirs, and then brought suit to enjoin the judgment and for specific performance of the compromise. This injunction was dissolved and the suit dismissed, from which judgment Cook appealed, but same was affirmed. This last judgment was set up against Cook as *res adjudicata* of the invalidity of the compromise entered into by him with the agent for the heirs, and was so treated by the trial court. This was held error, on appeal, because the pleadings left it uncertain on what ground the bill was dismissed, but the court adds that, "Had the petition and answer, and the motions or exceptions (i. e., in the injunction suit) been set out in the amended petition as well as the judgment entry, it might have settled the question as to what the court did decide upon in the dismissal of the petition."

In *Horton v. Hamilton*, 20 T. 611, an application was made by Horton for a mandamus to the surveyor to survey the land for him. Hamilton made himself a party to the suit and filed an answer to the petition for mandamus, objecting on various grounds of insufficiency in the petition as a reason why a mandamus should not issue and setting up his title. The mandamus was refused. In the subsequent suit it was held that the refusal of the mandamus was not and could not have been an adjudication of the title. One of the grounds of objection to the mandamus was that the court had no jurisdiction, another that the party already had a survey and there was no necessity for another, and that was one of the grounds on which the judgment refusing the mandamus was affirmed.

See *Groesbeck v. Crow*, 91 T. 74 (40 S. W. 1028).

§ 388. *Portis v. Cummings*, 14 T. 140.

An estate had been administered by the sale of the personalty and the payment of the debts, and the administration nearly, if not quite, completed. Nothing appears to have been necessary to complete the administration but a final settlement and discharge of the administratrix. *Held*, that though such settlement and discharge are not shown, it must be presumed that the administration had been closed, and the administratrix finally discharged.

Overruled: *Branch v. Hanrick*, 70 T. 731 (8 S. W. 539).

See *Murphy v. Menard*, § 353.

§ 389. *Powell v. Heckman*, 6 C. A. 307 (25 S. W. 166).

A judgment is not void because party died before suit was instituted.

Contra: *Jones Lumber Co. v. Rhoades*, 41 S. W. 102.

NOTE.—See note to *Thouvenin v. Rodriguez*, § 486.

§ 390. *Purnell v. Gandy*, 46 T. 199.

Objections to interrogatories on the ground that they are leading are not of the class which go only to the manner and form of taking, and are not therefore, required to be made in writing and before the trial.

Overruled: *Mills v. Herndon*, 60 T. 358.

An objection to an interrogatory that it is leading, goes to the manner and form of taking and must be made in writing before the trial.

NOTE.—In accord with *Mills v. Herndon*, see *Lee v. Stone*, 57 T. 451; *Buford v. Bostick*, 58 T. 68; *Mark v. Heidenheimer*, 63 T. 306; *Leach v. Dodson*, 64 T. 189; *Wade v. Love*, 69 T. 526 (7 S. W. 225).

§ 391. *Ragland v. Rogers*, 34 T. 617.

The widow of a decedent is not compelled to accept, as the homestead, the identical premises which were the homestead before her husband's death. She has the right to select out of the entire estate, the homestead lots set apart for herself and children.

Contra: *Hendricks v. Hendricks*, 46 T. 6.

The widow is entitled to have set apart to her, only the

homestead which existed at the time of her husband's death. She can not abandon that homestead and select another from the other property of the estate.

NOTE.—*Green v. Crow*, 17 T. 180; *Rogers v. Ragland*, 42 T. 422; *In re Estate of Horn*, 2. U. C. 297; *Moore v. Owsley*, 37 T. 603; *Terry v. Terry*, 39 T. 311; *Mayman v. Reviere*, 47 T. 360; *Abney v. Pope*, 52 T. 292.

See *Blair v. Thorpe*, § 32.

§ 392. *Rainwater v. Weaver*, 4 C. A. 595 (23 S. W. 914).

A provision for a stock of goods in trust from certain creditors, empowering the trustee to sell the goods at retail until the stock should be so reduced as not to justify further retail sale, and then to sell the remainder in bulk, does not of itself render the instrument void, though the grantor was insolvent, and all of his property was conveyed.

Contra: *Piezer v. Petcolas*, 50 T. 638.

A mortgage upon a specific article, with possession and power of disposition left in the mortgagor is in truth no mortgage at all—it is certainly no lien. The power to hold possession and dispose of the property is inconsistent with the very nature of the mortgage, and indeed, it would not be going too far to say that such an instrument was a nullity. As to all the world, except as to the parties themselves, such a mortgage will be held void as against the policy of the law.

§ 393. *Read v. Henderson*, 57 S. W. 78.

Under the statute providing that if a female ward marries, the guardianship shall be immediately settled and the guardian discharged, a ward who married in November, 1893, and did not object to the settlement and discharge of her guardian until October, 1898, lost her right to recover by limitation, since the statute began to run as against her from the date of her marriage.

Overruled: *Allen v. Stovall*, 63 S. W. 863.

Where the guardian has never been discharged, neither the majority of the male nor the marriage of the female ward sets the statute of limitation in motion so as to bar a recovery on the guardian's bond by the ward.

NOTE.—It is held, in the overruling case, that *Reed v. Henderson* is in conflict with the decision of *Marlowe v. Lacy*,

68 T. 155, and it approves the decision of *Marlowe v. Lacy* and disapproves that of *Reed v. Henderson*.

§ 394. *Reynolds v. Dechaums*, 24 T. 174.

Testimony as to one's incapacity to make a contract, by reason of his being intoxicated at the time, is admissible.

Overruled: *Brown v. Mitchell*, 88 T. 350 (36 S. W. 621).

See *Garrison v. Blanton*, § 159.

NOTE.—However, in the case of *Reynolds v. Dechaums*, there appears to have been no objection made to the opinion of the witness as given in evidence, and its admissibility is not discussed.

§ 395. *Reynolds v. Lansford*, 16 T. 286.

The statute of limitation need not be pleaded by plaintiff, where it is the foundation of a suit for the recovery of property. It is only required when insisted on as a defense.

Contra: *Molino v. Benavides*, 60 S. W. (Sup.) 875.

Here the supreme court, while holding the question not before it for decision, intimates that it approves a different rule.

See notes to *Mayers v. Paxton*, § 328, and *Curlin v. Hendricks*, § 98.

NOTE.—*Reynolds v. Lansford* was overruled on another question by *Bell v. Raquet*. See *King's Conflicting Cases*, vol. 1, sec. 178.

§ 396. *Reynolds v. Lansford*, 16 T. 286.

Where property is conveyed by a debtor in failing circumstances, to a third person, and a creditor brings suit to set aside the fraudulent sale, the statute of limitation would not commence until after judgment, for until then the creditor had no effectual means of enforcing his claim.

Contra: *Vodrie v. Tynan*, 57 S. W. 680.

The statute of limitation, barring a creditor's suit to set aside an insolvent debtor's fraudulent conveyance, will be held to run from the date of the creditor's knowledge of the fraud, notwithstanding his judgment was not recovered till afterwards.

§ 397. *Rhine v. Hodge*, 1 C. A. 368 (21 S. W. 140).

The wife, joined by her husband, conveyed her separate land, but the certificate of acknowledgment fails to state that

the officer explained the instrument to the wife. The consideration for the conveyance was three promissory notes, payable to the wife, which she indorsed to a third party, who brought a suit against the maker of the note and against the husband and wife as indorsers, for the foreclosure of the vendor's lien. The holder of the note purchased the land at foreclosure sale, and brought a suit in trespass to try title for the property. *Held*, that the wife was estopped by the judgment of foreclosure, to contest the validity of her conveyance, and such estoppel enured to the benefit of her vendee.

Contra: *Blagge v. Moore*, 6 C. A. 359 (23 S. W. 466).

The facts that a wife, who owns an interest in lands, joins her husband and the other joint owners in an ex parte application to the district court for partition, and that the attorney for all the parties bought in the land in trust for one of them, and accounted to such husband for his wife's interest in the proceeds of the sale all with the wife's knowledge, do not estop her from afterwards denying the validity of the sale, where the wife did not conceal any facts, and no part of the proceeds were used to discharge any lien on, or otherwise benefit, her separate property.

NOTE.—The following authorities are in accord with the first case: *Morris v. Turner*, 5 C. A. 711 (24 S. W. 959); *Urquhart v. Womack*, 53 T. 618; *Henderson v. Terry*, 62 T. 281; *Baxter v. Dear*, 24 T. 17; *Lee v. Kingsbury*, 13 T. 68; *Webb v. Mallord*, 27 T. 86; *Ryan v. Maxey*, 43 T. 192; *Johnson v. Taylor*, 60 T. 365; *Dalton v. Rust*, 22 T. 133; *Berry v. Donley*, 26 T. 737; *Fitzgerald v. Turner*, 43 T. 79; *Johnson v. Bryan*, 62 T. 623.

§ 398. *Riddick v. Bryant*, 16 C. A. 241 (41 S. W. 78).

A plea to jurisdiction is not waived by a continuance generally at the first term, though the defendant took no steps to invoke action of the court thereon.

Contra: *Spencer v. James*, 10 C. A. 327 (31 S. W. 542).

Allowing a term to pass without invoking action of the court on such a plea is a waiver thereof. See note to *Weekes v. Sunset Brick & Tile Co.*, *infra*, § 516; also, §§ 7, 24, 170, 379, 492 and 516.

§ 399. *Rio Grande Ry. Co. v. Cross*, 5 C. A. 454
(23 S. W. 529).

In this case, money was delivered to the railway company to be shipped to New Orleans. The road only undertook to carry it to Point Isabel, and deliver it to the Morgan Steamship Company. The court says the evidence does not show the shipment to be an interstate one, but places its decision on another ground.

Contra: *Houston Direct Nav. Co. v. Ins. Co. of North America*, 89 T. 1 (32 S. W. 889).

See *Missouri Pac. Ry. Co. v. Sherwood*, § 344.

Railway v. Cross is referred to in *Navigation Co. v. Ins. Co.*, and that portion of it with reference to the shipments not having been an interstate one, is disapproved.

§ 400. *Ritz v. City of Austin*, 1 C. A. 455 (20 S. W. 1029).

This was a suit against the city for the death of Ritz, and it was held that municipal corporations were not included in the statute allowing damages for the death of "any person," through the wrongful act, neglect or default of another. It was announced in this opinion that the statute applied only to natural persons and not to corporations.

Limited: *Fleming v. Texas Loan Agency*, 87 T. 238 (27 S. W. 126).

The case of *Ritz v. City of Austin*, was one against a municipal corporation, and the reasoning of the opinion that the statute does not apply to any corporation, was not approved by the refusal of a writ of error.

The statute does include private corporations.

NOTE.—*Rigdon v. Temple Waterworks Co.*, 32 S. W. (C. A.) 830.

§ 401. *Roberts v. Powell*, 22 C. A. 211 (54 S. W. 643).

The clerk of the district court has authority to receive money in satisfaction of a judgment rendered in his court.

Contra: *Texas & Pacific Ry. Co. v. Walker*, 57 S. W. (Sup.) 568.

The clerk of the district court has no authority in his official capacity to receive money in satisfaction of a judgment, unless he is ordered to do so by the courts.

§ 402. *Robson v. Jones*, 33 T. 324.

It may be justly questioned under our system in which a jury trial is constitutionally secured to parties in all cases, whether an auditor's report, when objected to by either party, can be properly read in evidence upon the trial.

Contra: *Eagle Mfg. Co. v. Hanaway*, 90 T. 581 (40 S. W. 13).

An auditor's report, although excepted to, in the absence of any evidence contradicting it, is sufficient to support a judgment rendered in accordance with the facts contained in it, and is *prima facie* proof of the facts stated in it, and if not contradicted by evidence offered by either party, will support a judgment in accordance therewith.

NOTE.—*Kempner v. Galveston*, 76 T. 451 (13 S. W. 460); *Hill v. Dons*, 37 S. W. 638; *Whitehead v. Perie*, 15 T. 7; *Kendall v. Hackworth*, 66 T. 506 (18 S. W. 104); *Dwyer v. Kalteyer*, 68 S. W. 559, 5 S. W. 75; *Richie v. Levy*, 69 T. 137 (6 S. W. 685); *Hughes v. Christy*, 26 T. 233; *Barclay v. Tarrant Co.*, 53 T. 256; *Horan v. Long*, 11 T. 234; *Bapp v. O'Connor*, 21 S. W. 620; *Moore v. Waco Bldg. Assn.*, 28 S. W. 1033.

§ 403. *Rogers v. East Line Lumber Co.*, 11 C. A. 108 (33 S. W. 313).

When a corporation becomes insolvent, the functions of its officers change, and they then become trustees of the property and are bound to manage and control it for the benefit of the creditors and stockholders.

Limited: *A. B. Frank Co. v. Berwind*, 47 S. W. (C. A.) 681.

The expression in *Rogers v. Lumber Co.*, was not necessary to a decision of that case, and the true rule is that the trust relation does not arise between the directors of an insolvent corporation *until it has ceased to do business*, and a director of a corporation in a state of insolvency, but yet a going concern, may by attachment and levy on its property, gain a preference over other creditors for a debt incurred in good faith by the corporation, to such director.

§ 404. *Rogers v. Galveston City Ry. Co.*, 76 T. 505
(13 S. W. 540).

A servant assumes the risk ordinarily incident to his employment, and such as arise from open and visible imperfections of things about which he is employed, *and of defects which he might have known by the use of ordinary care.*

Contra: *M. K. & T. Ry. Co. v. Hannig*, 91 T. 347 (43 S. W. 508).

When a servant enters the employment of the master, he has a right to rely upon the assumption that the machinery, tools and appliances with which he is called upon to work, are reasonably safe, and that the business was conducted in a reasonably safe manner. He is not required to use ordinary care to see whether this has been done or not. He does not assume the risks arising from the failure of the master to do his duty, unless he knows of the failure and the attendant risks, or in the ordinary discharge of his own duty, must necessarily have acquired such knowledge.

NOTE.—*The rule in the Hannig case has been reaffirmed several times, and is now the settled law of this state.*

The expression of a contrary rule in Rogers v. Railway, was hardly necessary to a decision of that case because the defect there was open to common observation, and seems to have been known to the servant.

See *Bonnet v. Railway*, 89 T. 72 (33 S. W. 334); *Railway Co. v. Dingle*, 42 S. W. 971; *Railway v. Baker*, 1 T. Ct. Rep. 709. *The following are in accord with the Rogers case and must be considered as overruled.* *Tex. Mex. Ry. v. Whitmyre*, 58 T. 276; *G. C. & S. F. Ry. v. Johnson*, 83 T. 628 (38 S. W. 520).

See §§ 250 and 340.

§ 405. *Rogers v. Watson*, 1 W. & W., sec. 382.

While the authorities are somewhat conflicting, we think the rule may be considered as well settled that it is not necessary to set up contributory negligence of plaintiff, in a special pleading, but such negligence may be proved by the defendant under the general issue.

Contra: *Mo. Pac. Ry. Co. v. Watson*, 72 T. 631 (10 S. W. 731).

In an action for damages, for injury caused by the neg-

ligence of the defendant, if contributory negligence upon the part of the plaintiff be relied upon as a defense to the action, it must be pleaded by the defendant, unless the contributory negligence appears from the pleading of the plaintiff.

NOTE.—*H. & G. N. Ry. Co. v. Parker*, 50 T. 346; *Mutual Ins. Co. v. Davidge*, 51 T. 244; *G. C. & S. F. Ry. Co. v. Murray*, 73 T. 4 (11 S. W. 125); *G. C. & S. F. Ry. Co. v. Shrieder*, 85 T. 152 (19 S. W. 1036); *W. U. Tel. Co. v. Apple*, 28 S. W. 1022; *M. K. & T. Ry. Co. v. Jamison*, 34 S. W. 674; *Railway Co. v. Magrill*, 15 C. A. 358 (40 S. W. 188); *D. & W. Ry. Co. v. Spicker*, 61 T. 427; *G. C. & S. F. Ry. Co. v. Redeker*, 67 T. 181, 2 C. A. 513; *H. & T. C. Ry. Co. v. Towser*, 57 T. 293; *S. A. A. P. Ry. Co. v. Bennett*, 76 T. 151 (13 S. W. 319); *Oil Mill v. Janrard*, 91 T. 289 (42 S. W. 959); *T. & P. Ry. Co. v. Murphy*, 46 T. 362; *H. & T. C. Ry. Co. v. Cowser*, 57 T. 302; *Brown v. Sullivan*, 71 T. 475 (10 S. W. 288); *H. & T. C. Ry. Co. v. Odum*, 53 T. 346; *City of Denison v. Sanford*, 2 C. A. 662 (21 S. W. 784).

See *D. & W. Ry. Co. v. Spicker*, § 101.

§ 406. *Roller v. Holley*, 13 C. A. 636 (35 S. W. 1074).

[Writ of error denied.]

Suit was brought against Roller in the district court of Limestone county to foreclose a lien on land in that county. Roller was a resident citizen of Virginia and was served with a certified copy of the note and of the petition, as required by the statute of service on non-residents. This notice was served on him in Virginia on December 30, 1890, notifying him to appear on January 5, 1891, being the first day of the January term. On January 9, 1891, Roller having failed to appear, judgment was rendered against him by default and sale made thereunder.

In this subsequent suit by Roller against the purchasers, he attacked the foregoing judgment as null and void, as the court had no jurisdiction because he was a citizen of Virginia, and service was had on him there, and the time given for him to appear and answer was not sufficient, and the same was not reasonable notice. *Held*, that the state of Texas, having jurisdiction by reason of the lien, had authority to prescribe the manner of obtaining service, and the statute having been complied with, the judgment was binding.

Overruled: Roller v. Holly, 176 U. S. 399; L. Ed. Bk. 44, p. 520.

The supreme court of the United States here reversed the case on the ground that the notice given was insufficient. In closing the opinion of the court, Justice Brown says: "Without undertaking to determine what is a reasonable notice to non-residents, we are of opinion, under the circumstances of this case, and considering the distance between the place of service and the place of return, that five days was not a reasonable notice, or due process of law; that the judgment obtained upon such notice was not binding upon the defendant Roller, and constitutes no bar to the prosecution of this action."

NOTE.—While the notice under the former statute had to be served only five days before the first day of the term, judgment could not be rendered until the fifth day of the term—the defendant was given until that day to answer. This was only a day less than is now given, for while the service must be ten days before the term, answer must be filed on the second day of the term.

It seems, therefore, that our present statute comes under the ban of this decision.

§ 407. *Rose v. Riddle*, 3 Willson C. C., sec. 300.

A claim made to property, under the statute providing for the trial of the right of property, releases all claim for damages, not only against the officer but against those who ordered him to make the levy, they being joint wrongdoers with him.

Contra: City Nat. Bank v. Colgin, 51 S. W. 856.

While a claim under the statute releases all the claim for damages *as against the officer* making the levy, it does not have that effect as against those who directed him to make it.

§ 408. *Ross v. McGowen*, 58 T. 603.

The supreme court will not, after the submission of a cause and after its decision, grant a rehearing and award a certiorari to perfect the record and a motion to rehear is based on the defectiveness of the record, and when no excuse is offered to show why the defect was not discovered before the resubmission.

Contra: W. U. Tel. Co. v. O'Keefe, 87 T. 423 (28 S. W. 945).

See *McMickle v. Texarkana National Bank*, § 318.

§ 409. *Rusher v. City of Dallas*, 83 T. 151 (18 S. W. 333).

An assignment of error, "that the court erred in sustaining the demurrer of defendant holding that said petition did not state any cause of action for which defendant was liable," does not comply with the statute or the rules.

Contra: Clarendon L. & C. Co. v. McClelland Bros., 86 T. 179 (23 S. W. 536).

Here it was held that an assignment that "the court erred in overruling the defendant's general demurrer to plaintiff's original petition," was good.

§ 410. *S. & E. T. Ry. Co. v. Ewing*, 21 S. W. 700.

The special instruction requested by the defendant was in several paragraphs, apparently written one after another and relating to different phases of the case, without being separated, except that they are numbered. *Held*, the court is not required to select and give one of several charges when the others are not proper.

Contra: *Burnham v. Logan*, 88 T. 1 (26 S. W. 46).

Special instructions were presented to the court, divided into separate paragraphs. Some of them were proper, while others were not. The trial judge indorsed on the charge: "The foregoing special charge requested by the defendant is refused by the court, for the reason that the same, as a whole, does not present the law applicable to the case." *Held*, when a requested charge is divided into separate paragraphs, and one is in itself correct and applicable to the case, the court should not refuse it because it is connected on the same paper with a paragraph which is erroneous.

NOTE.—*Willis v. Barnett*, 7 T. 584; *Brownson v. Scanlan*, 59 T. 222; *Hamburg v. Wood*, 66 T. 168 (18 S. W. 628); *Railway v. Cullers*, 81 T. 394 (17 S. W. 19); *Houston v. Blythe*, 60 T. 513; *Lanyon v. Edwards*, 26 S. W. 524; *Railway v. Neff*, 26 S. W. 784; *Railway v. Sein*, 33 S. W. 559; *Railway v. King*, 2 C. A. 122 (20 S. W. 1014, 23 S. W. 917); *Fordyce v. Yarbrough*, 1 C. A. 260 (21 S. W. 421).

See *Williams v. Emberson*, § 533.

§ 411. *Salmon v. Downs*, 55 T. 243.

Where several vendor's lien notes are given for the same land, and are assigned to different parties, all have equal rights to have satisfaction out of the land; and this without reference to the order in which they may have been assigned or which first matured.

Questioned: *Douglass v. Blount*, 55 S. W. (C. A.) 526.

In this case, the vendor transferred one of three vendor's lien notes and retained the other two. The assignee of the note foreclosed his lien and Douglass became the purchaser of the land at that sale. Thereafter, the vendor transferred the other two notes and his superior title to Blount who brought suit for the land and prayed, in the alternative, for a foreclosure of his lien. It was held that when the first note was assigned, the assignee acquired a preference over the vendor, and a foreclosure under that note passed the legal and equitable title to Douglass.

The cases of *Salmon v. Downs*, and *Wooters v. Hollingsworth*, 58 T. 371, are referred to as being opposed to the "overwhelming weight of authority."

NOTE.—An application for a writ of error was dismissed in *Douglass v. Blount* (see 56 S. W. 334), because the supreme court was of the opinion that there was no conflict between the opinion of the court of civil appeals in *Douglass v. Blount*, and the cases of *Salmon v. Downs* and *Wooters v. Hollingsworth*, for the reason that in the last two cases the contest was between different assignees of vendor's lien notes of the same series, and not between the vendor and an assignee. The expressions in *Fisher v. Whitehead*, 64 T. 638, which the court of civil appeals cites, are shown by Chief Justice Gaines to be dicta, because, in that case, there was an express agreement that the assignee should have priority.

As *Douglass v. Blount* was reversed and remanded, the supreme court had no jurisdiction of the case when it decided there was no conflict with the cases cited and the application was dismissed. However, the reasoning of Chief Justice Gaines leads us to believe that the supreme court inclined to approve *Salmon v. Downs*, and *Wooters v. Hollingsworth*, and to disapprove the dicta in *Fisher v. Whitehead* and the rule announced by the court of civil appeals in *Douglass v. Blount*.

§ 412. *San Antonio & A. P. Ry. Co. v. Morgan*, 46 S. W. (C. A.) 672.

In an action for damages for injuries, the proof of life expectancy by mortuary tables is admissible where the impairment of the earning capacity is shown to be permanent, even though such impairment is only partial.

Contra: *City of Honey Grove v. Lamaster*, 50 S. W. (C. A.) 1053.

The mortuary tables are not admissible to show life expectancy, unless the injury resulted in the death of the party or in the entire destruction of his earning capacity.

NOTE.—*Railway v. Nelson*, 49 S. W. (C. A.) 710, is in accord with *City v. Lamaster*.

In *Railway v. Cooper*, 2 C. A. 42 (20 S. W. 990), in which a writ of error was denied, the court of civil appeals, found as a fact that the party's ability to earn money was practically destroyed, but from expressions in the opinion, this court seems to have thought the evidence admissible where the injury is permanent although the capacity to earn money is only partially destroyed.

See §§ 153 and 462.

§ 413. *S. A. & A. P. Ry. Co. v. Robinson*, 73 T. 285 (11 S. W. 327).

The following charge was given by the trial court: "Where a railroad car containing passengers is thrown from the track and a passenger who has paid his fare is thereby injured, the presumption is that the accident resulted either from the fact that the track was out of order, or that the train was badly managed, or both combined, and the burden is on the defendant company to show by a preponderance of evidence that it was not negligent in any of those respects." *Held*, the propositions stated in the charge are not correct, either as presumptions of law or fact.

Contra: *Mexican Central Ry. Co. v. Lauricella*, 87 T. 277 (28 S. W. 277).

When a passenger is injured by an accident, such as the derailment of a train, at a place where the track and train are entirely under the control of the company—that is to say, where they are not interfered with by any extraneous force, a presumption of negligence arises, and in order for the company

to exonerate itself from liability for the injury, it must adduce evidence to show that the accident could not have been avoided by the exercise of the utmost care and foresight reasonably compatible with a prosecution of its business.

NOTE.—*Railway Co. v. Smith*, 74 T. 278 (11 S. W. 1104).

§ 414. *Schooler v. Hutchinson*, 66 T. 324 (1 S. W. 266).

Where goods are wrongfully seized and sold, the owner is entitled to recover the value of the goods at the date of the seizure, with interest thereon from that date, even though such owner became the purchaser at the sale for a less sum.

Overruled: *Field v. Munster*, 32 S. W. (C. A.) 417, Id. 89 T. 102 (33 S. W. 852).

In such case, the owner's measure of damage, in the absence of any special damages as interest on the value of the property from the time of its seizure to the time of its sale, is the amount paid by the owner thereof at the sale with interest thereon, and any amount the property depreciated in value while it was withheld from the owner.

NOTE.—*Scott Grocer Co. v. Kelly*, 36 S. W. 140, follows *Field v. Munster*, *Hart v. Blum*, 76 T. 113 (13 S. W. 181), and *Casey v. Chaytor*, 5 C. A. 385 (23 S. W. 1114), are also overruled by *Field v. Munster*. In accord with the latter case, *Wilson v. Manning*, 35 S. W. 1079.

§ 415. *Schofield v. Douglass*, 30 S. W. (C. A.) 817.

There are expressions in this opinion showing the court to have been of the opinion that article 3218, Revised Statutes, did not apply to action for land, but the decision was based on another point.

Contra: *Morgan v. Baker*, 40 S. W. (C. A.) 27.

Article 3218, Revised Statutes, providing that limitation shall not run for twelve months after the death of a person, applies to real as well as personal actions.

See *Hunton v. Nichols*, § 245.

§ 416. *Scogin v. Perry*, 32 T. 21.

By force of the act of November 9, 1866, a judgment of the court of record, in this state, will not become dormant in less than ten years, although no execution be issued thereon.

Overruled: Sampson v. Wyatt, 49 T. 627.

The act of November 9, 1866, applied to the dormancy that previously resulted from the failure of the plaintiff, after the issuance of execution within the year from the rendition of the judgment, to cause executions to issue from term to term, or at least from year to year, as previously required, and not that which resulted from the failure to issue execution within the year from the date of the judgment.

NOTE.—*Black v. Epperson*, 40 T. 163; *Jordan v. Corley*, 42 T. 286; *Ayers v. Waul*, 44 T. 549; *Cravens v. Wilson*, 35 T. 55; *Hutchins v. Chapman*, 37 T. 614; *Wright v. Rhodes*, 42 T. 527.

The case of Williams v. Murphy, 36 T. 174, is in accord with overruled case, but was overruled by *Black v. Epperson*. See *King's Conflicting Cases*, vol. 1, sec. 251. See R. S., art. 2326a.

See *Dewitt v. Jones*, § 107.

§ 417. *Scott v. State*, 31 Crim App. 405 (20 S. W. 831).

A proceeding to strike the name of an attorney from the roll of attorneys for fraudulent conduct, is a criminal proceeding, and the court of criminal appeals has exclusive jurisdiction of an appeal in such matters.

Contra: *Scott v. State*, 86 T. 321 (24 S. W. 789).

See *State v. Tunstall*, § 440.

§ 418. *Sexton v. Hindman*, 2 W. & W. (Civ. Cases), sec. 462.

The sureties on a replevy bond, given in a distress proceeding, are liable though the warrant be quashed.

Contra: *Mitchell v. Bloom*, 91 T. 634 (45 S. W. 558).

Where the writ falls, the replevin bond falls with it. This was a case where the property had been taken under a writ of sequestration, but the rule is discussed and recognized to be the same in distress proceedings.

NOTE.—*Holding with the latter case*, see *Flynn v. Lynch*, 1 W. & W., Civ. Cases, sec. 787; *Weir v. Brooks*, 17 T. 638; *Burch v. Watts*, 37 T. 135; *Hodde v. Susan*, 58 T. 393; *Rohrbough v. Leopold*, 68 T. 254; *Cheatham v. Riddle*, 8 T. 162; *Kildare Lumber Co. v. Bank*, 41 S. W. 68.

Holding with the overruled case, see *McLeod Artesian*

Well Co. v. Craig, 43 S. W. 934; *Bemis v. Wells*, 10 C. A. 626 (31 S. W. 827); *Cahn v. Jaffray*, 12 C. A. 324 (34 S. W. 372); *Filgo v. Bank*, 38 S. W. 237.

§ 419. *Shaw v. Cade*, 54 T. 307.

In the meaning of the second section of the act of April 7, 1874, governing change of venue, and which provides, "That upon the grant of a change of venue, the cause shall be removed to some adjoining county, the courthouse of which is nearest to the courthouse of the county in which the suit is pending," the nearest courthouse is not necessarily the one nearest by geometrical measurement, but may be the one most convenient of access and nearest by the most traveled route.

Limited: *Loonie v. Tillman*, 3 C. A. 334 (22 S. W. 524).

We are of the opinion that the nearest courthouse within the meaning of article 1273, Revised Statutes, does not necessarily mean the courthouse most accessible by rail.

§ 420. *Shirley v. Waco Tap. Ry. Co.*, 78 T. 131.
(10 S. W. 543).

A deed of trust by a railway company, and a conveyance under it, described the property conveyed as "all and singular the chartered rights, privileges, and franchises of every kind granted to the Waco & Northwestern Railway Company by acts of the legislature of the state of Texas which are now possessed by it or to which it may hereafter become entitled under said acts and the laws of Texas relating to railways, and all other rights and appurtenances." *Held*, the purchaser at a foreclosure sale acquired title to the road as constructed, and did not take the lands donated by the state for the construction.

Questioned: *Quinlan v. H. & T. C. Ry. Co.*, 89 T. 356 (34 S. W. 738).

The Waco & Northwestern Railway Company executed two deeds of trust in which the following description is used: "And also all and singular the chartered rights, privileges and franchises of every kind granted to the Waco & Northwestern Railway Company by acts of the legislature of the state of Texas, which are now possessed by it or to which it may hereafter become entitled under said acts and the laws of Texas relating to railroads." *Held*, do not the words, or de-

scription in the deed above quoted, include the right of the company to acquire land? And is not the deed sufficient to pass the title to all lands, if any, acquired by the company after the mortgage was executed?

§ 421. Short v. Ward, 25 T. 510.

A certified copy of an assignment of a land certificate, certified to by the commissioners of the general land office, the original being on file in the land office, and the assignment having been made before the issuance of the patent, is not admissible in evidence.

Contra: Holmes v. Anderson, 59 T. 481.

A certified copy of a land certificate made by the commissioner of the general land office, the original being on file in his office, is admissible in evidence, and subject only to such objections as could be made to the original.

NOTE.—After the opinion was rendered in *Short v. Wade*, article 468, O. & W. Dig., was amended by articles 2253, 2259 and 3808, *Revised Statutes*.

§ 422. Shulte v. Hoffman, 18 T. 678.

Where a cause has been referred to arbitrators and objections are filed to the award, questions of fact involved in such objections are to be tried by the court and not by a jury.

Contra: Bowden v. Crow, 2 C. A. 595 (21 S. W. 612).

The grounds for vacating an award by arbitrators are quite similar to those for setting aside a verdict of a jury or judgment of a court, and in this class of cases the practice is now quite well settled to be that when complaint is made of a verdict or judgment after the adjournment of the term, the complainant must set forth the facts of his case, as well as the grounds upon which he seeks to set aside the judgment, and the whole case is decided by the jury under proper instructions from the court. If the jury find that the judgment should be set aside, they at the same time pass upon the merits of the case; but if they find that the judgment should not be vacated, they proceed no further.

§ 423. Siddall v. Goggan, 68 T. 708.

When property sequestered has been replevied, the sureties upon the replevin bond have the right to absolve themselves

from liability under the judgment by delivering the property sequestered within ten days after the judgment.

Contra: Krall v. Printing Press Co., 79 T. 556 (15 S. W. 565).

Where property sequestered has been replevied, the statute gives the defendant who has replevied the property the right to return the property levied, but it does not in terms confer on sureties the right to have it returned in satisfaction of the judgment; and in the absence of a law thus providing, or some contract between the principal and surety securing such a right, they can not claim it.

NOTE.—The reason given for the rule announced in *Krall v. Printing Press Co.*, does not appear to be sound when read in connection with the statute, which provides: "If the property replevied, as provided in the preceding article, be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure or destroy, sell or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof and of the fruits, hire or revenue of the same, in case he shall be condemned so to do." Art. 4874, 2 Batts.

By the terms of the surety's obligation he is required to have the property forthcoming to abide the decision of the court and, therefore, when he produces the property in accordance with the terms of his obligation, it seems that he has, in effect, performed his obligation and should be entitled to a discharge.

It is also provided that if he fails to have the property forthcoming, that he will pay the value thereof, but by the terms of his bond, his liability to pay the value is dependent upon his failure to have the property forthcoming. It certainly was not the purpose of the lawmakers to make the judgment, which is based upon the bond, more onerous than the bond itself, or to give to the defendant in sequestration, rights which his sureties could not assert.

See *McClenney v. Floyd*, § 307.

§ 424. *Sieffer v. McLean*, 7 C. A. 158 (26 S. W. 315).

In this case the following language is used, though not necessary to the decision, viz.: "It has been held in this state that the statutory penalty for permitting minors to remain in a saloon could be recovered, even though the parents consented to it. This is not parallel with the case we are considering. It is not a violation of law for the parent to consent that his child remain in a saloon, or that liquor be sold or given to him."

Limited: *Edgett v. Finn*, 36 S. W. 830.

A parent can not recover the penalty, under a liquor-dealer's bond, for a sale of liquor to his son, when he consents to such sale.

This case was reversed because one paragraph of the charge was on the weight of the evidence, in that it told the jury that they would find for defendant if they "believed that the plaintiff himself, by his course of conduct with his said son, encouraged him to form habits of dissipation, and this caused or helped to cause the said conduct."

§ 425. *Simon v. Ash*, 1 C. A. 210 (20 S. W. 719).

If any of the debts, recited in a deed of trust made for preferred creditors, be false or fictitious, in the whole or in part, and it be so charged in the pleading of the attacking creditors, the deed is void for fraud, and it matters not whether other creditors whose claims are just know of the fact or not.

Contra: *Rider v. Hunt*, 6 C. A. 328 (25 S. W. 314).

A fraudulent intent and knowledge on the part of one of two mortgagees does not affect the rights of the other. He stands in the same position as if he had taken a separate mortgage to himself.

NOTE.—*In accord with Rider v. Hunt are Kraus v. Haas*, 6 C. A. — (25 S. W. 1025); *Id.* 86 T. 688 (27 S. W. 256); *Weaver v. Goodman*, 51 S. W. (C. A.) 861, where held that although an accepting creditor knows that another claim secured is fictitious, yet if he accepts in good faith with the sole intention of securing his own claim and not to give color to the fictitious claim, the instrument would be valid as to him.

Wade v. Odle, 54 S. W. 786 (*writ of error refused*), where instrument held valid as to innocent creditors, though

made with fraudulent intent on the part of the mortgagor and this was known to the trustee. See Sutton v. Simon, 91 T. 638 (45 S. W. 559), and other cases cited in Wade v. Odle.

Keller v. Smith, 49 S. W. 263; Solomon v. Wright, 28 S. W. (C. A.) 416.

§ 426. *Slade v. Young, 32 T. 668.*

In a suit on a note reserving an express lien, there was a general verdict for the plaintiff for the debt and interest with no mention of the lien. *Held*, that it was not error to decree the foreclosure, inasmuch as the lien was an express lien reserved on the face of the note.

Contra: Preston v. Breedlove, 45 T. 47.

In a suit on a promissory note and to enforce the vendor's lien, where the defendant pleaded a general denial, a verdict for the amount of the note is insufficient to sustain a judgment foreclosing the lien.

NOTE.—Handel v. Elliott, 60 T. 145; McConkey v. Henderson, 24 T. 212; Railway v. Haynes, 82 T. 448 (18 S. W. 605).

§ 427. *Smith v. Fly, 24 T. 345.*

A suit to recover back a proportion of the purchase money, because of a deficiency in the number of acres sold, is barred in two years.

Contra: Blount v. Bleker, 13 C. A. 227 (35 S. W. 863).

Under our present statute, such a cause of action is covered by article 3207, and is not barred until four years. The statute under which *Smith v. Fly* was decided, was different from the present one.

See *Bass v. James, § 16.*

§ 428. *Smith v. Pickham, 8 C. A. 326 (28 S. W. 565).*

When a note recites that in case it "is placed in the hands of an attorney for collection, we agree to pay ten per cent addition on the amount as attorneys fees," a right to such fees accrued when the holder is obliged to place the note in the hands of an attorney before maturity, in order to protect himself against the insolvency of the maker and indorser.

Contra: Laning v. Iron City Natl. Bank, 89 T. 601 (35 S. W. 1048).

Plaintiff brought action, aided by attachment, upon a note not due. The note stipulated that, if placed in the hands of an attorney for collection, the maker should pay all costs of collection, including a certain attorney's fee. The attachment was found to have been wrongfully sued out. *Held*, that, the action having been begun before any default on the part of the maker of the note, he was not liable for the attorney's fees. The maturity of the note before judgment did not render the defendant liable for attorney's fees, his failure to pay at maturity being due to plaintiff's wrongful attachment, since he was entitled to set off, against the amount of the note, the damages sustained by him by reason of the attachment.

§ 429. *Smith v. Shinn*, 58 T. 1.

Evidence, by the son, offered to prove the identity of his deceased father as the person to whom the patent was issued, that he had heard his father say that he served in the Revolution of 1836, was hearsay and inadmissible.

Overruled: *Byers v. Wallace*, 87 T. 503 (28 S. W. 1056, 29 S. W. 760).

On the trial it was competent, to read in evidence contents of a letter from a cousin of a soldier who fell at Goliad, written from Goliad a few days before the massacre, stating that "the cousin of the writer was there and was a member of a company from Alabama," as well for the purpose of identification as of pedigree. The statement as to time, place and residence are admissible as being so closely related to, if not in fact part of the pedigree that the same rules of law are applicable. So much of the opinion in *Smith v. Shinn* as is in conflict with the rule here asserted, is overruled.

§ 430. *Smith v. Smith*, 1 T. 621.

Where a common-law marriage is established, and the wife of such marriage is still living and undivorced, and the husband contracts a second marriage under the laws of Texas, upon his death the wife of the second marriage is entitled to letters of administration on the estate of her deceased husband.

Contra: *Chapman v. Chapman*, 11 C. A. 392 (32 S. W. 564).

A person having a wife living and undivorced, with whom he had contracted a common-law marriage, can not contract a second valid marriage, and upon the death of the husband, the

wife of the first marriage is entitled to administer the estate of her deceased husband, to the exclusion of the second wife.

NOTE.—*The overruling case was decided by the court of appeals. The supreme court denied a writ of error, but held that the wife of the first marriage was entitled to administer the estate. Chapman v. Chapman, 88 T. 641.*

See *Routh v. Routh*, 57 T. 589.

§ 431. *Smith v. Taylor*, 34 T. 607.

A locator of public lands does not have a vested right therein, and the state has absolute control of such lands until it has parted with the title by the issuance of a patent.

Contra: *Snider v. Methun*, 60 T. 487.

The right of a person who has located a valid land certificate upon vacant public land, and caused the same to be surveyed and the survey and certificate returned to the general land office within the time prescribed by law, is a vested right and entitled to all the protection given to such right by the guaranties contained in every constitution since the adoption of that of the republic.

NOTE.—*Sherwood v. Fleming*, 25 T. (Sup.) 428, is in accord with *Snider v. Methun*, but the following cases are in accord with *Smith v. Taylor*, and are, in effect, overruled: *Hart v. Gibbons*, 14 T. 213; *Smith v. Taylor*, 34 T. 607.

See § 206.

§ 432. *Smith v. Taylor*, 34 T. 589.

The power of the court to appoint a guardian *ad litem*, for parties to a suit who are minors and who are unrepresented, is discretionary and vested in the court from the necessity of the case, and that discretion must rest in the sound judgment of the court, and under ordinary circumstances the exercise of that discretion is not the subject of revision.

Contra: *Taylor v. Rowland*, 26 T. 293.

Where it appears on the face of the petition that one of the defendants was a minor, and his guardian, if any he had, was not made a defendant, nor was there a guardian *ad litem* appointed for him, it was error to render a judgment against such minor defendant, and this court will revise the judgment for such error, notwithstanding no exception on this ground was taken in the court below or in the assignments of error.

NOTE.—The case of *Taylor v. Rowland* was decided previously to the case of *Smith v. Taylor*, yet the last case is believed to be the better authority, and is supported by article 1210, *Revised Statutes*, which is practically a re-enactment of the old statute which was in force when the above decisions were rendered. See *Paschal's Dig.*, article 1446.

The following authorities support *Taylor v. Rowland*, and in effect, hold that a judgment against a minor without the appointment of a guardian *ad litem*, is erroneous, and, therefore, a denial of the principle that the appointment of a guardian *ad litem* for the minors is discretionary: *Puckett v. Johnson*, 45 T. 551; *Wheeler v. Ahrenbeak*, 54 T. 537; *Jones v. Parker*, 67 T. 79 (3 S. W. 222); *Ashe v. Young*, 68 T. 125 (3 S. W. 456).

§ 433. *Sneider v. Methun*, 60 T. 487.

Neither of the acts in force prior to the act of November 29, 1871 (*Pasch. Dig.*, 4562-4566), expressly made it necessary to file in the general land office the certificate under which a survey was made, within twelve months; the act of November 29, 1871, required the certificate or other evidence of right to land, to be returned with the survey.

Contra: *Von Rosenberg v. Cuellar*, 80 T. 249 (16 S. W. 58).

See *House v. Talbot*, § 235.

§ 434. *Southern Pacific Co. v. Wellington*, 36 S. W. 1114.

The averments of the original petition after an amendment has been filed, can not be introduced as evidence against the plaintiff.

Contra: *Barrett v. Featherstone*, 89 T. 567 (36 S. W. 245).

Abandoned pleadings are admissible in evidence against a party making them.

NOTE.—See *Coles v. Elliott*, § 80; *Coles v. Perry*, 7 T. 109.

§ 435. *Sprague v. Haines*, 68 T. 218 (4 S. W. 371).

The service of citation upon a minor defendant, is essential in order to confer jurisdiction upon the court and authorize the appointment of a guardian *ad litem*.

Questioned: *Alston v. Emerson*, 83 T. 231 (18 S. W. 566).

See *Kremer v. Haynie*, § 274.

§ 436. *Stanley v. Schwalby*, 85 T. 348 (19 S. W. 264).

As no action can be maintained against the government, no limitation would run in its favor against the owner of land occupied by the United States.

Overruled: *Stanley v. Schwalby*, 147 U. S. 508; L. E. Bk., 37, p. 260.

In an action of trespass to try title to land, against officers of the United States exercising an authority under the United States, in holding possession of the land, if defendants show requisite title through adverse possession in themselves, though in fact for the United States, a valid defense is made out.

§ 437. *Stansell v. Cleveland*, 64 T. 660.

A note provided that ten per cent attorney's fees were to be paid if the note was collected by law. An attachment was sued out before the note was due, and the goods were replevied by defendant; the note was not paid at maturity. *Held*, that since the petition claimed the attorneys' fees, and the answer admitted all indebtedness claimed in the petition, judgment was rightfully given for the attorneys' fees against defendant, and the note not being paid at maturity, authorized plaintiff to proceed to judgment. That \$500 damages recovered by the defendant in reconvention was rightfully applied to the payment of interest and attorneys' fees before deducting any portion of it from the principal debt.

Questioned: *Laning v. Iron City Natl. Bank*, 89 T. 601 (35 S. W. 1048).

See *Smith v. Pickham*, § 428.

§ 438. *State v. De Gress*, 53 T. 387.

A suit by information in the nature of quo warranto, prosecuted in the name of the state of Texas, against one charged with unlawfully holding the office of mayor of a city, is a civil proceeding of which the district court had original jurisdiction when the value of the office is five hundred dollars or over.

Contra: *Dean v. State*, 88 T. 290 (30 S. W. 1047, 31 S. W. 185).

See *Bell v. Faulkner*, § 21.

§ 439. *State v. Shadle*, 41 T. 404.

The act of May 28, 1864, entitled, "An act to punish unlawful interference with private property or private rights," embraced more than one subject and was repugnant to the provisions of the constitution.

Questioned: *Clark v. Finley*, 93 T. 177 (54 S. W. 343).

"The cases of the *State v. Shadle*, 41 T. 404, and *Bills v. State*, 42 T. 305, relied upon by counsel for relator, are not all satisfactory to us. In the former, the statute was held inoperative before they reached the constitutional question, and when reached, the court merely said: 'It also embraces more than one subject and is repugnant to the provisions of the constitution on this subject.' What the two or more subjects were, is not pointed out by the court, and they are not apparent to us."

§ 440. *State v. Tunstall*, 51 T. 81.

A proceeding against an attorney or counsellor at law, charging him with fraudulent or dishonorable conduct, and having for its object to strike from the roll of practicing attorneys, his name, is not a civil suit, but is a criminal or *quasi* case.

Overruled: *Scott v. State*, 86 T. 321 (24 S. W. 789).

A proceeding instituted in the name of the state of Texas against an attorney for the purpose of revoking his license to practice law, and to strike his name from the roll of attorneys, is not a criminal prosecution, but is a civil suit from which an appeal will lie to the court of civil appeals.

NOTE.—*The case of Scott v. State*, 31 Crim. App. 405 (20 S. W. 831), is in accord with the overruled case, but was rendered by the court of criminal appeals.

§ 441. *Stein v. Freiberg-Klien Co.*, 64 T. 272.

The district court has power to issue injunctions without reference to the amount in controversy.

Limited: *Lazarus v. Swafford*, 15 C. A. 367 (39 S. W. 389).

See *Anderson Co. v. Kennedy*, § 5, and note.

§ 442. *Stephenson v. Chappell*, 33 S. W. (C. A.) 880.

A receipt for briefs prepared for the appellate court, with a waiver of the filing of the same in the trial court, signed by the attorneys representing defendants in error in both courts,

is an appearance in the appellate court and cures any defect in the service of the citation in error.

Contra: Bird Canning Co. v. Cooper Grocery Co., 58 S. W. (C. A.) 1038).

A writing signed by the attorney for the defendant in error, which acknowledges the receipt of plaintiffs' brief and waives notice thereof, will not operate as a waiver of a citation in error.

§ 443. *Stewart v. Mackey*, 16 T. 56.

Where the husband and wife executed a mortgage on their homestead, and afterwards removed from it and acquired another homestead, the mortgage took effect and had force as a lien as soon as the property mortgaged was abandoned and another homestead acquired.

Contra: O'Brien v. Woeltz, 58 S. W. (Sup.) 943; *Id.*, 59 S. W. 535.—Same case styled *Woeltz v. Woeltz*, (57 S. W. 35)—*Id.*, (C. A.) 905.

Under the present constitution a mortgage given by the husband and wife on their business homestead was void and did not become effective after their abandonment of the place and acquisition of another business homestead.

NOTE.—In *Marler v. Handy*, 88 T. 421 (31 S. W. 636), it was held that a deed to the homestead, executed by the husband alone, operated, by way of estoppel, to pass title to the grantee upon the acquisition by the grantor of a new homestead for his family. It was there said the deed was not void, but in *Stallings v. Hullum*, 89 T. 431 (35 S. W. 2), while *Marler v. Handy* is not in any way overruled, yet it is said that by the expression there used that the deed was not void "it was not meant that it was valid as to the wife, or that it could in the slightest manner affect her rights before a new homestead was acquired."

See *Marler v. Handy*, § 324.

§ 444. *Stewart v. Miller*, 3 W. & W., sec. 292.

It is well settled that a note or other security given in consideration of money won at gaming, is void, even in the hands of an innocent holder for a valuable consideration.

Contra: *Thompson v. Samuels*, 14 S. W. 143.

See *Donnelly v. Citizens Bank*, § 109.

§ 445. *Stirman v. Turner*, 4 W. & W., sec. 140.

County courts have general jurisdiction over the persons and estates of minors, and the father is the natural guardian of his minor child, and has the right, we think, to invoke, by *habeas corpus*, the enforcement of his authority as such guardian by the county court, or a judge thereof, when the minor is held in custody by a person not entitled to the guardianship of his person.

Overruled: *Rice v. Rice*, Texas Ct. Rep., vol. 1, p. 288 (59 S. W. 941).

The county court is without jurisdiction to determine, in a proceeding by *habeas corpus*, to whom the custody of an infant belongs.

NOTE.—*Legate v. Legate*, 87 T. 248 (28 S. W. 281); *Dean v. State*, 88 T. 294 (30 S. W. 1047, 31 S. W. 185); *Casanova v. Massengale*, 54 S. W. 317; *State v. Deaton*, 93 T. 243 (54 S. W. 901).

The opinion in the overruling case is based upon the amendment of article 5, section 8, of the present constitution, as amended in 1891, the overruled case having been decided under the law as it existed prior to that amendment.

§ 446. *St. Louis Cattle Co. v. Vaught*, 1 C. A. 388 (20 S. W. 855).

Where defendant, in fencing its tract of land, inclosed a smaller tract belonging to plaintiff, and used the entire inclosure for grazing as its own, defendant is liable for rent, in trespass to try title, though it never disputed plaintiff's title or right of possession.

Contra: *Abbey v. Shiner*, 5 C. A. 287 (24 S. W. 91).

The owner of uninclosed land has no right of action growing out of the entry and grazing of stock upon it, and one who incloses his own land, and includes that of another within his fence, does not become liable for the use of the other's land by using the pasture for his stock, and allowing it to run at large therein, nor is there any obligation resting on him to fence off the other's land.

NOTE.—*Davis v. Davis*, 70 T. 124 (7 S. W. 826); *Pace v. Potter*, 85 T. 473 (22 S. W. 300); *Agency Co. v. McClelland*, 23 S. W. 576; *Mann v. Durst*, 90 T. 76 (37 S. W. 311).

§ 447. *St. L. & S. F. Ry. Co. v. Traweck*, 84 T. 65.

Suit was brought in Dallas county, and the defendant pleaded its privilege of being sued in Lamar county. It was held that the defendant had an agency in Dallas county and could be sued there, but the court adds that the defendant having answered "under the authority of *York v. State*, 73 T. 653, and other cases since," this was an appearance which gave the court jurisdiction.

Contra: *Equitable Mtg. Co. v. Weddington*, 2 C. A. 373 (21 S. W. 576).

Where a foreign corporation, having an office in a certain county, pleads in due order its privilege to be sued in that county, such plea is not waived by filing a plea to the merits.

NOTE.—*The expression quoted from Railway v. Traweck is clearly erroneous. The York case referred to non-residents, and it is well settled that a resident of the state, or corporation having an office in the state, does not waive its plea of privilege filed in due order, by answering to the merits.*

§ 448. *Stevens v. Stoner*, 54 S. W. 934.

Plaintiff may show title by limitation, although he has not pleaded it specially.

Contra: *Molino v. Benavides*, 60 S. W. (Sup.) 875.

Here the supreme court, while holding the question not before it for decision, intimates that it approves the contrary rule.

See notes to *Mayers v. Paxton*, § 328, and *Curlin v. Hendricks*, § 98.

§ 449. *Stoker v. Wilson*, 3 W. & W., sec. 10.

Where a tenant vacates property which he has leased for a fixed period, it is the duty of the landlord to use ordinary care to realize some revenue from it by renting it.

Contra: *Racke v. Anheuser-Busch Brew. Ass'n*, 42 S. W. 774.

A landlord is not obliged to endeavor to rent premises for the benefit of a tenant who refuses to continue in occupancy under a lease.

§ 450. *Stovall v. Odell*, 10 C. A. 169 (30 S. W. 66).

In a suit for land, between one claiming under an unrecorded deed and one claiming under a judgment duly abstracted prior to the record of the deed but after its execution and delivery, the claimant under the judgment has the burden of proving that he did not have notice of the unrecorded deed at the time he acquired the judgment lien.

Contra: *Barnett v. Squires*, 93 T. 193 (54 S. W. 241).

Under the decision of the supreme court, the burden is upon the person asserting right under the unrecorded instrument to show notice to the creditor prior to the acquisition of his lien.

NOTE.—A writ of error was refused in *Stovall v. Odell*, but no reference is made to it in the later case of *Barnett v. Squires*.

§ 451. *Stroude v. Springfield*, 28 T. 664.

In addition to the other essentials, a deed to be admissible as an ancient instrument must have been acted on so as to afford some corroborative proof of its genuineness.

Limited: *Ammons v. Dwyer*, 78 T. 650 (15 S. W. 1049).

A deed thirty years old, or over, coming from the proper custody and free from suspicion, is admissible in evidence as an ancient instrument, without proof of accompanying possession, or other acts of ownership corroborative of its genuineness.

NOTE.—*Holmes v. Coryell*, 58 T. 688; *Pasture Co. v. Preston & Smith*, 65 T. 451; *Parker v. Chancellor*, 73 T. 478 (11 S. W. 503); *Warren v. Fredrick*, 76 T. 652 (13 S. W. 643); *Bass v. Sevier*, 58 T. 567; *Gainer v. Cotton*, 49 T. 102.

§ 452. *Stuart v. Baker*, 17 T. 417.

If a minor makes a deed purporting to be for a valuable consideration, such as would be valid as against an adult, it is valid until the infant has avoided it by disaffirming it after arriving at majority, and it is indispensable to the disaffirmance that the consideration, if money or other property, should be tendered to the purchaser.

Limited: *Bullock v. Sprowls*, 93 T. 188 (54 S. W. 661).

See *Cummings v. Powell*, § 97.

§ 453. Sublett v. McKinney, 19 T. 439.

Philip A. Sublett drew a draft on McKinney and Williams in favor of General Sam Houston for \$500. On presentation of the draft, McKinney and Williams paid the same and thereupon instituted suit against Sublett for the amount of the draft. Sublett's defense was that plaintiffs' cause of action was on an implied contract and barred in two years. *Held*, that the plaintiffs' action was based upon the contract in writing, and not barred in two years.

Overruled: *Faires v. Cockrill*, 88 T. 428 (35 S. W. 191).

Cockrill, Faires and others, executed a written obligation to the S. A. & A. P. Ry. Company by which they agreed to secure right of way and depot grounds and pay for the same to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract and sued Faires and the other signers for their share of the amount paid. *Held*, that the railway company could have maintained an action thereon but Cockrill could not do so, for his cause of action was upon the implied promise of Faires and others to indemnify him for whatever he should pay in their behalf, and his action was barred by the statute of limitation of two years.

NOTE.—Judge Brown in rendering the opinion in the overruling case evidently overlooked the difference between the statute of limitation of 1841, under which *Sublett against McKinney* was decided, and the Revised Statutes under which *Faires against Cockrill* was decided. The statutes of 1841 read: "All actions of debt grounded upon any contract in writing shall be commenced and sued within four years next after the cause of action, or suit, and not afterwards." The Revised Statutes read: "There shall be commenced and prosecuted, within four years after the cause of action shall have accrued and not afterwards, all actions for debt, where the indebtedness is evidenced by, or founded upon any contract in writing."

§ 454. Swiberg v. Brunswick, 4 W. & W., sec. 143.

It was not error to admit the mortgage in evidence without proof of its execution. The petition was founded in part upon the mortgage, and a plea of *non est factum* not having been interposed, the mortgage was admissible in evidence without proof of execution, and without the filing and notice required

by article 2257 of the Revised Statutes.

Contra: Durham v. Atwell, 27 S. W. 316.

In an action on a note, and to foreclose a mortgage executed to secure its payment, the admission of a certified copy of the mortgage, not filed before the announcement of "Ready for trial," is error.

NOTE.—The first case appears to be supported by article 2314, Batt's Annotated Statutes, which reads as follows: "If suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this state, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted as evidence in like manner as such original might be; but if the defendant shall plead and file an affidavit under oath that such original instrument or note in writing has not been executed by him or by his authority, the clerk of the court having custody of such original shall, on being subpoenaed as a witness, attend with the same on trial of the cause."

§ 455. Swinborn v. Johnson, 24 S. W. 567.

Under article 316, Revised Statutes, permitting either party to plead new matter in the county or district court not pleaded in the justice's court, except in a new cause of action set up or counterclaim, the defendant, on appeal, though he has filed no pleading before the justice, may in the county or district court, file an answer containing a general denial and special denials of certain items in plaintiff's action.

Overruled: Ostrom v. Tarver, 29 S. W. 69.

NOTE.—Ostrom v. Tarver has been overruled. See Ostrom v. Tarver, § 362.

§ 456. Sydnor v. Totman, 6 T. 190.

An affidavit for attachment must show what portion of the debt is due and what portion is to become due.

Overruled: Gimbel v. Gomprecht, 89 T. 427 (35 S. W. 470).

See Avery v. Zander, § 9.

§ 457. Taylor v. Snow, 47 T. 464.

While the sale of property under execution, after the death of the defendant, is relatively void, the title acquired by the

purchaser at such sale can not be maintained against the administrator, or parties acquiring title under or through him. Such sale may, however, be avoided by any party having an interest in the property, if he should seek to do so in the proper time and manner.

Limited: Hooper v. Caruthers, 78 T. 438 (15 S. W. 98).

A sale made under execution against a deceased person, after his death, he being alive at the time the judgment was rendered, is void in the sense it is wholly inoperative to pass title to or as against any one, and, therefore, may be attacked directly or collaterally.

NOTE.—*Conkrite v. Hart*, 10 T. 140; *Chandler v. Burdett*, 20 T. 42; *McMiller v. Butler*, 20 T. 402; *Turner v. Smith*, 9 T. 626; *Kendrick v. Rice*, 16 T. 254; *Grassmeyer v. Beeson*, 18 T. 753; *Mills v. Alexander*, 21 T. 154; *Thouvenine v. Rodriguez*, 24 T. 469; *Rodriguez v. Lee*, 26 T. 32; *Bohanan v. Hans*, 26 T. 445; *Moke v. Brackett*, 28 T. 443; *Giddings v. Steele*, 28 T. 732; *Fleming v. Seligson*, 57 T. 524; *Ewing v. Wilson*, 63 T. 88; *Borgess v. Lilly*, 18 T. 200; *Emmons v. Williams*, 28 T. 776; *Webb v. Mallard*, 27 T. 80; *Cook v. Sparks*, 47 T. 28; *Pierce v. Logan*, 2 U. C. 353. See *Burnett v. Gamble*, 1 T. 133; *Kitchen v. Crawford*, 13 T. 516; *Robertson v. Paul*, 16 T. 410; *Bynum v. Govan*, 9 C. A. 559 (29 S. W. 1119); *Cain v. Woodward*, 74 T. 549 (12 S. W. 319). See *King's Conflicting Cases*, vol. 1, § 19.

To illustrate how frequently our courts of last resort have changed their views upon this question: *Conkrite v. Hart* overrules *Burnett v. Gamble*; *Taylor v. Snow* overrules *Conkrite v. Hart* and reinstates *Burnett v. Gamble*; *Hooper v. Caruthers* overrules *Taylor v. Snow* and *Burnett v. Gamble*, and reinstates *Conkrite v. Hart*.

The result of the various conflicts has now settled the question in favor of the principle announced in *Hooper v. Caruthers*.

See *Fleming v. Ball*, 60 S. W. 985, where the court of civil appeals cites the conflicting cases and follows *Hooper v. Caruthers*, and the supreme court refused a writ of error.

See §§ 458, 485.

§ 458. *Taylor v. Snow*, 47 T. 462.

A judgment against a person who was dead at the institution of the suit, is not void.

Contra: M. T. Jones Lumber Co. v. Rhoades, 41 S. W. 102.

Such a judgment is null and void, and may be collaterally attacked.

NOTE.—See note to *Thouvenin v. Rodriguez*, § 485.

§ 459. *Taylor v. Stevens*, 17 C. A. 36 (42 S. W. 1048).

In an action of trespass to try title, judgment was rendered in favor of the plaintiffs against the defendant and wife for two-thirds of the value of the use and occupation of the land sued for. Upon appeal, the wife assigns error in rendering judgment against her. *Held*, the complaint that the judgment against the wife was erroneous, is not sustained by the record. It did not award execution against her separate estate, and, hence, was not to her prejudice.

Contra: *Carson and Wife v. Taylor*, 19 C. A. 177 (47 S. W. 395).

Where the husband and wife are sued upon a debt, for goods furnished the husband in the conduct of his business as a retail merchant, upon which a general judgment is rendered against the defendant and his wife, and under this judgment an execution is levied upon the separate property of the wife, she can not enjoin the sale thereunder, she being precluded by the decree, although it does not authorize the execution to be levied upon her separate estate.

NOTE.—*Powers v. Parks*, 33 S. W. 718; *Taylor v. Stevens*, 42 S. W. 1048; *Howard v. North*, 5 T. 290; *Nichols v. Dibrell*, 61 T. 540; *Cayce v. Powell*, 20 T. 767; *Lynch v. Elkes*, 21 T. 230; *Trimble v. Miller*, 24 T. 215; *Haynes v. Stovall*, 23 T. 625; *Menard v. Sydnor*, 29 T. 260; *Wofford v. Hunger*, 55 T. 483; *Ferguson v. Reed*, 45 T. 574; *Taylor v. Harris*, 21 T. 438; *Lee v. Kingsbury*, 13 T. 71; *Baxter v. Dear*, 24 T. 20; *Webb v. Mallord*, 27 T. 86; *McFaddin v. Crumpler*, 20 T. 374; *Stanzbury v. Nichols*, 30 T. 150; *Covington v. Burleson*, 28 T. 368; *Cruger v. McCracken*, 87 T. 584 (30 S. W. 537).

The case of Carson v. Taylor appears to be supported by the weight of authority, but the case of Taylor v. Stevens is founded upon the better reason and is more in accord with the statute. Prior to the enactment of March 13, 1848, of articles 1201, 2970 and 2971, Revised Statutes, governing the liability of married women, the common law was in force. By that

law the wife's existence was practically merged into that of her husband. Upon her marriage, the property of the wife became that of the husband and she could neither sue nor be sued, or create any liability which could be maintained in a suit against her. The right to maintain a suit against the wife and subject her separate estate to its payment, was first created by the statute of 1848, which is as follows:

"Art. 1201. The husband and wife shall be jointly sued for all debts contracted by the wife for necessities furnished herself and children, and for all expenses which may have been incurred by the wife for the benefit of her separate property.

"Art. 2970. The wife may contract debts for necessities furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property, and for such debts suit may be brought in the manner prescribed in article 1201.

"Art. 2971. Upon the trial of any suit as provided for in the preceding article, if it shall appear to the satisfaction of the court or jury that the debt so contracted or expenses so incurred were for the purposes enumerated in said article, and also that the debts so contracted or expenses so incurred were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife, at the discretion of the plaintiff."

This statute creating a liability against the estate of the wife, and authorizing a suit to be brought against her and her husband, to subject her separate property to the payment of debts and thereby creating a liability where none before existed, and authorizing the maintenance of a suit against her who, by the former law, could not be sued, was in derogation of the common law and therefore, the statute should be strictly construed and the remedy strictly pursued.

It was the expressed purpose and intent of the lawmakers in the enactment of this statute, to confine the wife's liability: first, solely to debts contracted for necessities furnished herself or children and for the benefit of her separate property; second, it must be made to appear to the satisfaction of the court and jury, that the debts so contracted were for the above purposes, and, third, that the debts so contracted were reasonable and proper. As the law which for the first time created a liability against the wife, and the same law specifically prescribes the manner in which the remedy should be pursued, the failure to pursue the remedy in the mode and manner

pointed out by the statute goes to the foundation of the action and the court is without jurisdiction to render a judgment making the wife's separate estate liable, unless it be rendered in the mode and manner prescribed by the statute. In other words: if a statute creates a liability where none existed at common law, and the same statute prescribes the manner in which it shall be enforced, the court is without jurisdiction to enforce the liability, except in the prescribed manner, and a judgment rendered in violation of the statutes is void and can be attacked directly or collaterally. The lawmakers in authorizing the wife to hold a separate estate from that of her husband, created safeguards for her protection. When she sold or mortgaged her separate estate, her freedom of will was secured and the undue influence of the husband was guarded against by requiring a privy examination of the wife before the officer taking the acknowledgment. Where her property was sought to be charged by a suit, another safeguard was created in making it the duty of the court and jury to see that the debt sued on was one that was contracted for necessities and that the prices charged therefor were reasonable and proper. If there be no privy examination all the decisions hold that the wife's conveyance is absolutely void. Upon the same principle, if there be no allegation that the debt sued on was contracted by the wife for necessities and no proof in support of the fact and no adjudication of the issue, the judgment is invalid and will not support an execution against her separate estate and a sale thereunder is void. If the rule as announced in *Carson v. Taylor* is the law, then the husband can squander the estate of his wife by allowing a suit to be brought against himself and his wife without charging that the debt contracted was for necessities furnished, without proof of that fact and without any prayer for a judgment against the separate estate of the wife, and she, upon being served with process, and failing to answer, a general judgment is rendered against the husband and wife upon which execution will run against her separate estate, and except upon appeal, or writ of error, she can not be heard to attack the validity of the judgment, upon the theory that she has had her day in court, although the very statute which creates her liability and prescribes the remedy for its enforcement, has been violated. The decisions of *Carson v. Taylor* and others following it, were based upon the case of *Howard v. North*, which was decided in 1845, prior to the

enactment of the above statute, and therefore, ought not to be cited in support of the proposition that a general judgment against the wife for the debts of the husband could not support an execution against her separate estate. The supreme court in the case of *Krueger v. McCracken*, wherein the wife was a surety upon a writ of error bond, held that the court was without jurisdiction for the reason that the statute required two sureties and as the wife could not bind herself, except for necessities furnished herself and children and for expenses incurred for the benefit of her separate property, her obligation as surety was null and void. It is true that this question was not raised by the wife, collaterally, but in the original action, yet when the court held that her obligation was void, it was equivalent to holding that a valid judgment could not be rendered upon a void obligation.

§ 460. *Texas Bldrs. Sup. Co. v. Natl. L. & I. Co.*, 22 C. A. 349 (54 S. W. 1059).

Where the owner of a building has actual notice of claims due upon a building, such claims are entitled to protection under the mechanic's lien, although the notice was not given in writing.

Contra: *Berry v. McAdams*, 50 S. W. 952 (93 T. 431).

Under Revised Statutes, article 3308, in order for a materialman to fix a lien against the owner of a building, he must give the owner notice in writing as required by the statute, and unless he does so he has no lien.

NOTE.—It was also held in *Texas Builders' Supply Co. v. Natl. L. & I. Co.*, that the constitution gives materialmen a lien independent of any statutory provisions, although they have no contract with the owner. This question was also certified in *Berry v. McAdams*, but was not decided. On this point see *DeLauney v. Butler*, § 106, and *Padgitt v. Dallas Brick & Constr. Co.*, § 366.

§ 461. *Texas Express Co. v. Dupree*, 2 W. & W., sec. 318.

The contract of carriage bound the company to transport the property from the place of shipment to the point of destination. The company could legally obligate itself to carry the property beyond its own line of road, and having done so, it could not legally stipulate in the contract that it would not be liable for loss, except upon its own line, for when a carrier con-

tracts to carry goods not only over his own route, but over connecting lines, he can not contract that his responsibility may terminate at the end of his own line.

Contra: Gulf C. & S. F. Ry. Co. v. Baird, 75 T. 256.

See *G. C. & S. F. Ry. Co. v. Allison*, § 175.

**§ 462. Texas-Mexican Ry. Co. v. Douglas, 69 T. 694
(7 S. W. 77).**

In an action for damages where death has resulted, or where the capacity of the person receiving personal injury is entirely destroyed, evidence is admissible to show the probable duration of the life of the injured party, had no injury been inflicted, and the value of an annuity for the life of such person calculated on the basis that he earned a designated sum per annum. Unless the capacity of the party to earn money was entirely destroyed by the injury, such evidence is not admissible.

Overruled: G. H. & S. A. Ry. Co. v. Cooper, 2 C. A. 42 (20 S. W. 990).

In an action for damages for personal injuries, when the earning capacity of the person injured is not wholly destroyed, evidence is admissible to show the probable duration of the life of the person injured.

NOTE.—The overruled case was decided by the supreme court, while the overruling case was by the court of civil appeals, and for that reason the first case would be considered the authoritative decision but for the fact that the supreme court denied a writ of error in the last case (85 T. 431; 21 S. W. 678), yet in its opinion, it is intimated that the court of appeals made a wrong application of some of the cases cited, and this suggestion may have had reference to the case of *Railway Co. v. Douglas*. Be this as it may, the better reason appears to be with the overruling case—for if mortality tables are admissible in evidence to enable the jury to measure the damage when there is total disability, they are equally admissible when there is only a partial disability. If the jury are required to know the duration of life before they can measure the whole loss, they must also know the duration of life in order to ascertain a part of the loss.

See *G. H. & S. A. Ry. v. Cooper*, § 153, and *Railway v. Morgan*, § 412.

§ 463. *T. & N. O. Ry. v. Crowder*, 63 T. 502; *Id.*, 76 T. 500 (13 S. W. 381).

The burden is on the plaintiff to show that his injury was not contributed to by his own negligence.

Overruled: *G. C. & S. F. Ry. Co. v. Sheider*, 88 T. 152 (30 S. W. 902).

See note to *Walker v. Herron*, § 501.

§ 464. *T. & N. O. Ry. v. Tatman*, 10 C. A. 434 (31 S. W. 333).

Under General Laws, 1891, chapter 24, a conductor of one switch engine is a fellow servant with a conductor of another switch engine in the same yard.

Contra: *G. H. & S. A. Ry. Co. v. Masterson*, 51 S. W. 1091.

The crews on different switch engines are separate and distinct, and a switchman on one engine is not a fellow servant of a switchman on another engine in the same yard.

§ 465. *T. & P. Ry. Co. v. Brown*, 11 C. A. 503 (33 S. W. 147).

This case, in so far as it recognizes the doctrine of the turntable cases, has been overruled.

Contra: *Dobbins v. M. K. & T. Ry. Co.*, 91 T. 60 (41 S. W. 62).

See *G. C. & S. F. Ry. v. Evansich*, § 181.

§ 466. *Tex. Pac. Ry. Co. v. Davis*, 2 W. & W., sec. 196.

Interest is not ordinarily recoverable as part of the damages for property lost or destroyed by a carrier.

Contra: *H. & T. C. Ry. Co. v. Jackson*, 62 T. 209.

See *Fowler v. Davenport*, § 138.

§ 467. *Tex. Pac. Ry. Co. v. Ferguson*, 1 W. & W., sec. 1254.

Interest on the value of baggage lost, is not recoverable.

Contra: *H. & T. C. Ry. Co. v. Jackson*, 62 T. 209.

See *Fowler v. Davenport*, § 138.

§ 468. *Texas & Pac. Ry. Co. v. Logan*, 3 W. & W., sec. 187.

When a carrier has contracted for the carrying of goods over another line beyond his route, the stipulation that his

responsibility is to terminate at the end of his own line, will be of no effect.

Contra: Gulf C. & S. F. Ry. Co. v. Baird, 75 T. 256.

See *G. C. & S. F. Ry. Co. v. Allison*, § 175.

§ 469. *Tex. & Pac. Ry. Co. v. Martin*, 2 W. & W., sec. 342.

Interest is not recoverable as part of the damages for goods lost by a carrier.

Contra: H. & T. C. Ry. Co. v. Jackson, 62 T. 209.

See *Fowler v. Davenport*, § 138.

§ 470. *Texas & Pac. Ry. Co. v. Pollard*, 2 W. & W., sec. 483.

In a suit by a plaintiff against a railway company for personal injuries, the defendant company can prove contributory negligence upon the part of the plaintiff, without specially pleading the same in its answer, for such proof is admissible under the plea of general denial.

Contra: Mo. Pac. Ry. Co. v. Watson, 72 T. 631 (10 S. W. 730).

See *Rogers v. Watson*, § 405.

§ 471. *T. & P. Railway Co. v. Reed*, 32 S. W. 120.

Admissions in abandoned pleadings can not be introduced in evidence against a party.

Contra: Barrett v. Featherstone, 89 T. 567 (35 S. W. 13, and 36 Id. 245).

A distinct admission made in pleading, by a party to a suit, may be read in evidence by the adverse party, although it is contained in a pleading that has been abandoned, and superseded by other pleading.

NOTE.—Following *Barrett v. Featherstone*, see *Blum v. Moore*, 42 S. W. 856. *Goodbar Shoe Company v. Sims*, 43 S. W. (C. A.). 1066.

In accord with Railway v. Reed, see *Coats v. Elliott*, 23 T. 606.

§ 472. *Texas & Pac. Ry. Co. v. Scrivener*, 49 S. W. 649.

The plaintiff is entitled to six per cent interest on the value of stock from the date of the killing.

Contra: St. Louis S. W. Ry. Co. of Texas v. Chambliss, 93 T. 62 (53 S. W. 343).

See *G. C. & S. F. Ry. v. Wedel*, § 187, and note.

§ 473. **Tex.-Mex. Ry. Co. v. Showalter**, 3 W. & W., sec. 70.

A claim for damages for personal injuries, being one that does not survive, is not assignable.

Contra: (Changed by statute.) Acts 1889, p. 103.

§ 474. **T. C. Ry. Co. v. Burnett**, 61 T. 638.

The wife is neither a necessary nor a proper party to a suit to recover money that is community property, and the overruling of an exception to her joinder in the suit is *ground for reversal*.

Contra: **San Antonio St. Ry. Co. v. Helm**, 64 T. 147.

While she is neither a necessary nor a proper party in such a suit, the case will not be reversed because the trial court overruled an exception to her joinder, unless it is shown that the defendant was prejudiced thereby.

§ 475. **Texas Transportation Co. v. Hyatt**, 54 T. 213.

It is not the general rule that on a first application for a continuance the application must show that the fees of the absent witness have been tendered him.

Contra: **T. & P. Ry. Co. v. Hall**, 83 T. 675 (19 S. W. 121).

"A mere service of a subpoena, without a tender of the fees of a witness, is the slightest diligence that a party can use."

NOTE.—While Judge Henry uses the language above quoted in *Railway v. Hall*, and seems to have been of the opinion that even a first application would have to show a tender of the witness fees, he does not refer to any authorities and under the view that the court took of the application in *Railway v. Hall*, the question was not really necessary to a decision thereon, because the application, not showing that it was a first application, was treated by the supreme court as a third application, which would make the overruling of the same within the discretion of the trial court.

Blum v. Bassett, 67 T. 196 (3 S. W. 33), and *Cleveland v. Cole*, 65 T. 402, follow the rule laid down in *Texas Transportation Co. v. Hyatt*, *supra*.

In *East Texas L. & I. Co. v. Texas Lumber Co.*, 21 C. A. 411 (52 S. W. 645), Judge Garrett seems to approve the rule quoted from *Railway v. Hall*, but the application in this case was a third application.

§ 476. *Texas Trunk Ry. Co. v. Ayres*, 83 T. 268
(18 S. W. 684).

Subsequent repairs are not admissible in evidence of negligence on the part of the road in regard to the track at the time and place of injury.

Questioned: *Texas & Pac. Ry. Co. v. Gay*, 88 T. 111 (30 S. W. 543).

See *G. C. & S. F. Ry. Co. v. McGowan*, § 184.

§ 477. *Thomas v. Chapman*, 62 T. 193.

A sheriff, levying attachments, has distinct causes of action against the makers of indemnity bonds to him, and they can not be made parties to a suit against him for levying the writ.

Contra: *Davis v. Bingham*, 56 S. W. 133.

Holds that the makers of the indemnity bonds can be made parties to such a suit, and bases the ruling on the provision of article 1204, Revised Statutes, act March 31, 1885, 19 Leg. 90. This act was passed after the decision in the *Thomas v. Chapman* case.

See also *Williams v. Warrane*, 82 T. 322.

§ 478. *Thomas v. Womack*, 13 T. 579.

Where the measure of recovery is not fixed by law, a verdict found to be excessive can not be cured by a remittitur.

Contra: *T. & N. O. Ry. Co. v. Syfan*, 91 T. 562 (44 S. W. 1064).

Article 1029a, changes the rule established in *Thomas v. Womack*.

See *G. C. & S. F. Ry. Co. v. Coon*, § 177.

§ 479. *Thompson v. Cullers*, 35 S. W. 412.

The earned fees of a public officer are subject to garnishment.

Contra: *Sanger et al. v. City of Waco*, 15 C. A. 424 (40 S. W. 549).—Writ of error refused.

The earned compensation of a public officer is not subject to garnishment.

§ 480. *Thompson v. Houston*, 31 T. 610.

A note payable twelve months after a treaty of peace between the Confederate States and the United States, can not be recovered upon.

Overruled: *Atcheson v. Scott*, 51 T. 221.

Such a note is valid, and became due two years after the close of the war.

§ 481. *Thompson-Houston Electric Co. v. Berg*, 10 C. A. 200 (30 S. W. 455).

Abandoned pleadings are inadmissible to prove a material fact.

Contra: *Barrett v. Featherstone*, 89 T. 567 (35 S. W. 13, 36 S. W. 245).

See note *Southern Pac. Co. v. Wellington*, § 434, and §§ 80 and 471.

§ 482. *Thompson v. Griffin*, 69 T. 139 (6 S. W. 410).

In this state, an appeal does not vacate the judgment below, but merely suspends its execution. Hence, the judgment, if competent to establish a plea of *res adjudicata*, could not be defeated for that purpose by a writ of error presented for its review.

Overruled: *Texas Trunk Ry. Co. v. Jackson*, 85 T. 605 (22 S. W. 1030).

An appeal or writ of error, whether prosecuted on cost or supersedeas bond, during its pendency, deprives the judgment of that finality of character necessary to entitle it to admission in evidence in support of the right or defense declared by it.

The expressions to the contrary in *Thompson v. Griffin* were not necessary to the decision of that case.

NOTE.—*Cook v. Carroll Land & Cattle Co.*, 6 C. A. 330 (25 S. W. 1034); *Cunningham v. Holt*, 12 C. A. 154, (33 S. W. 981), and *Maxwell v. Bank*, 24 S. W. 848, follow *Railway v. Jackson*,

See *Dallas, etc., Ry. v. Day*, § 100.

§ 483. *Thompson v. Jones*, 12 S. W. 77.

A sale of land to satisfy a judgment on foreclosure, though made under an execution issued after the death of the

mortgagor, can not be avoided in collateral proceedings, when there has been no administration on the estate.

Contra: Hooper v. Caruthers, 78 T. 438 (15 S. W. 98).

See *Taylor v. Snow*, § 458.

§ 484. *Thompson v. Westbrook*, 56 T. 265.

If, at the time of the execution of a deed absolute on its face, a mortgage be executed to secure the payment of purchase-money, the vendor may, when default is made in payment of the purchase-money, as between the vendee and himself, disregard the deed and make a valid conveyance of the land to another. Such subsequent conveyance would vest title in the purchaser, except as against one purchasing from the first vendee without notice actual or constructive of the mortgage.

Doubted: Huffman v. Mulkey, 78 T. 556 (14 S. W. 1029).

See *Kennedy v. Embry*, § 265.

§ 485. *Thouvenin v. Rodriguez*, 24 T. 468.

A personal judgment rendered in this state, against a non-resident defendant, upon constructive service authorized by the laws of this state, will be held to be as valid and binding as if rendered upon personal service on the defendant within the state.

Contra: Scott v. Streepy, 73 T. 547 (11 S. W. 532).

See *McMullen v. Guest*, § 319.

§ 486. *Thouvenin v. Rodriguez*, 24 T. 468.

The fact that a party to a judgment was dead before the suit to recover such judgment was commenced, does not by itself render the judgment void and subject to collateral attack.

Contra: M. T. Jones Lumber Co. v. Rhoades, 41 S. W. (C. A.) 102.—Writ of error refused.

A judgment, in an action against one who was dead at the time the suit was brought, is void, though the action is to subject land to a lien, and may be collaterally attacked.

NOTE.—In the last case cited, Judge Williams reviews the decisions in this state and distinguishes those cases in which the party died after suit was filed, but before judgment. In this class of cases he recognizes the true rule to be that the judgment is not void and that the record is conclusive proof of the

jurisdiction of the court and can not be impeached by proof of the death of the party before judgment. In this review it is found that all our decisions fall under this class where the party died pending the suit, and after jurisdiction obtained, except four, viz.: Thouvenin v. Rodriguez, supra; Mills v. Alexander, 21 T. 154; Rodriguez v. Lee, 26 T. 32, and Taylor v. Snow, 47 T. 462. In two of these cases—Mills v. Alexander and Taylor v. Snow—the record does not show whether the party died pending the suit or whether he was deceased at the institution of the suit.

See §§ 389, 458.

§ 487. *Tieman v. Baker*, 63 T. 641.

The statute, in its provisions regarding partition, does not contemplate that either the court or jury should determine, in the first instance, whether the land is susceptible of partition. That fact is decided first by the commissioners, and only after their report that a fair and equitable division can not be made is the court empowered to order a sale to effect partition.

Contra: Moore v. Blagge, 91 T. 151 (38 S. W. 979).

See *Keener v. Moss*, § 264.

§ 488. *Tolle v. Correth*, 31 T. 362.

Where the defendant owned the land upon which there was a spring, he had the right to use the water for the purposes of irrigation, provided he restored it back to its natural channel before it reached the lands of the adjoining proprietor; and if the stream was thus weakened so as to damage the adjoining proprietor, the defendant was not liable for such damages.

Criticised: Fleming v. Davis, 37 T. 171.

Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (*currere solebat*), without diminution or alteration. No proprietor has a right to use the water to the prejudice of other proprietors above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment.

NOTE.—Mud. Cr. I. Co. v. Vivian, 74 T. 170 (11 S. W. 1078); *Barrett v. Metcalfe*, 33 S. W. 759; *Baker v. Brown*, 55 T. 377; *Rhodes v. Whitehead*, 27 T. 309; *Ditch Co. v. Hudson*, 85 T. 587 (22 S. W. 398).

See § 132, wherein the case of *Fleming v. Davis* is overruled, and *Tolle v. Correth* approved.

§ 489. *Townsend v. Hill*, 18 T. 422.

Where a slave is hired for a year and, without any fault on the part of the hirer or a failure of proper care and medical attention, dies before the expiration of the time, the hirer is entitled to a corresponding abatement of the hire.

Contra: *Scherer v. Upton*, 31 T. 617.

See *McLemore v. McClellan*, § 316.

§ 490. *Tucker v. Carr*, 39 T. 98.

Under article 1003, Paschal's Digest, no distinction is made between real and personal property and the wife could not convey her separate personal property except in the manner prescribed by the statute, over her separate acknowledgment.

Overruled: *Ballard v. Carmichael*, 83 T. 355 (18 S. W. 734).

Under the act of 1846, the wife could convey her separate personal property (other than slaves) by parol executed contract.

See *Hollis v. Francois*, § 230.

§ 491. *Tulane v. McKee*, 10 T. 338.

A party is not entitled, under all circumstances, to amend his pleadings before announcing himself ready for trial, but the court has a discretion to refuse to permit the amendment where it unnecessarily or unreasonably delays the trial, or operates to the prejudice of the opposite party.

Contra: *Boren v. Billington*, 82 T. 137 (18 S. W. 101).

Article 1192, Revised Statutes, provides that "the pleadings may be amended under leave of the court, upon such terms as the court may prescribe, before the parties announce themselves ready for trial and not thereafter." This provision is mandatory, and the refusal to grant leave to amend at a proper time, is ground for reversal of the judgment.

NOTE.—*Shelton v. Berry*, 19 T. 154; *Teas v. McDonald*, 13 T. 349; *Connell v. Chandler*, 11 T. 247; *G. C. & S. F. Ry. Co. v. Butler*, 34 S. W. 758; *DeWitt v. Jones*, 17 T. 650.

§ 492. *Turman v. Robertson*, 3 W. & W., sec. 215.

Where a defendant pleaded in abatement the privilege of being sued in the county of his residence, and the cause was continued by consent at the term at which the plea was filed, *held*: that by consenting to the continuance and failing to demand action thereon, the plea was therefore waived.

Contra: *Howeth v. Clark*, 4 W. & W., sec. 314.

See *Peveler v. Peveler*, § 379, and *Riddick v. Bryant*, § 398.

§ 493. *Tutt v. Thornton*, 57 T. 35.

The payment of a note by a surety is not, as between himself and the principal, an extinguishment of the same, but his right of action against the principal is upon the note and not on an implied assumpsit.

Overruled: *Faires v. Cockrill*, 88 T. 428 (35 S. W. 191).

Cockrill, Faires and others executed a written obligation to the S. A. & A. P. Ry. Co., by which they agreed to secure right of way and depot grounds and pay for the same, to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract and sued Faires and the other signers for their share of the money paid. *Held*, that the railway company could have maintained an action thereon, but Cockrill could not do so, for his cause of action was upon the implied promise of Faires and others to indemnify him for whatever he should pay in their behalf, and his action was barred by the statute of limitation of two years.

NOTE.—See note, *Sublett v. McKinney*, § 453.

§ 494. *Unger v. Anderson*, 37 T. 55a.

Where a suit is brought against three makers of a joint and several promissory note, and two of the makers plead that they were sureties, it is error to permit the plaintiff to dismiss as to the alleged principal, who was not served, and take judgment against the other two.

Overruled: *Hooks v. Bramlett*, 1 W. & W., sec. 867.

Where parties signed an obligation as principals, and they are such in relation to the obligee, and in a suit against them, where citation as to one of them is returned "not served," it is not error to discontinue the suit as to him, though his relation to the other defendants is in fact that of a surety.

NOTE.—The overruled case was by the supreme court, and the overruling case was by the old court of civil appeals, and for that reason, the overruled case might be considered the better authority, but from the fact that the overruled case is supported by the following decisions by the supreme court: *Rita v. Hamilton*, 4 T. 327; *Lewis v. Riggs*, 9 T. 165; *Pridgen v. Buchanan*, 27 T. 592; *Mitchell v. DeWitt*, 25 T. (Sup.) 180; *Wykie v. Pinson*, 23 T. 488.

The conflict in the two cases arises from the construction of article 1257, *Revised Statutes*, which is as follows: "Where a suit is discontinued as to a principal obligor, no judgment can be rendered therein against an indorser, guarantor, surety, or drawer of an accepted bill, who is jointly sued, unless it is alleged and proven that such principal obligor resides beyond the limits of the state, or in such part of the state that he can not be reached by the ordinary process of law, or that his residence is unknown and can not be ascertained by the use of reasonable diligence, or that he is dead, or actually or notoriously insolvent." The overruled case, in effect, holds, that in order to prevent a discontinuance as to the principal, the relation of principal and surety need not appear from the instrument itself where the suretyship is averred in the answer, while the overruling case holds that the suretyship must appear from the face of the instrument sued on, and not from the averments in the answer, in order to prevent a discontinuance as to the principal.

§ 495. *VanderHoeven v. Nette*, 32 T. 183.

Here it was held that the acceptance of payment in Confederate money, because the recipient stood in dread of the authorities who denounced and threatened all persons who refused to accept Confederate money, was not made under duress.

Overruled: *Olivarri v. Menger*, 39 T. 76.

Here it is held that the rules laid down in *VanderHoeven v. Nette* might apply in a normal state of society, but that the conditions in Texas at that time were abnormal.

§ 496. *Veramenda v. Hutchins*, 48 T. 531.

It is believed to be a doctrine, thoroughly incorporated into our legal system, that the interest of the husband and wife in community property is equal, and that it is immaterial whether the grant or deed thereto be in the name of the hus-

band or wife, separately, or to them jointly. And an unauthorized conveyance by the surviving husband of community property, does not convey title or color of title, to the interest therein vested in her heirs.

Contra: *Patty v. Middleton*, 82 T. 586.

Where land is conveyed by deed to the husband, no beneficial interest to the wife appearing in the deed, within the meaning of the law, the wife has no legal title, and upon her death, the law does not confer upon her heirs any higher evidence of right or estate in character different from that held by her.

NOTE.—*Edwards v. Brown*, 68 T. 329; *Hill v. Moore*, 62 T. 610; *Wren v. Peel*, 64 T. 380; *Pouncey v. May*, 76 T. 565.

See *Garner v. Thompson*, § 158.

§ 497. *Vogelsang v. Null*, 67 T. 465.

Where the deed is executed by a minor without any false representations made to the grantee in reference to her age, and received by him without making any inquiry whatever upon the subject, the deed is voidable at the instance of the minor on attaining her majority, but it is necessary for her to tender the purchase money she may have received for her interest in the land; but she is not required to tender the money when the purchase money was received by a third party and never came into the possession of the minor.

Limited: *Bullock v. Sprowls*, 93 T. 188 (54 S. W. 661).

See *Cummings v. Powell*, § 97.

§ 498. *Vogt v. Bexar Co.*, 5 C. A. 272 (23 S. W. 1044).

The eight prerequisites enumerated in article 4373, are absolutely necessary to the taking of the property of an individual for the public use as a highway, and they are all jurisdictional.

Questioned: *Allen v. Parker Co.*, 23 C. A. 536 (57 S. W. 703).

See *Cummings v. Kendall Co.*, § 96.

§ 499. *Wade v. Love*, 69 T. 522 (7 S. W. 225).

In trespass to try title, brought by one who seeks to avoid a deed alleged to have been made by him during minority, and

without consideration, when the copy of the deed is attached to the petition and made a part thereof, which recites a consideration paid, the plaintiff must not only establish that he was a minor when the deed was made, but that no consideration was in fact paid. In such a case, when there is no offer to return a consideration for the land, it is incumbent on the plaintiff to show that he received none.

Limited: Bullock v. Sprowls, 93 T. 188 (54 S. W. 661).

See *Cummings v. Powell*, § 97.

§ 500. *Wagoner v. Rupley*, 69 T. 700 (7 S. W. 80).

Where improper evidence is admitted over formal objections in a trial before the court, and there is nothing in the record to show that it was not considered by the judge in deciding the issue, the court on appeal can not say he was not influenced by it, and must hold that there was error.

Contra: Moore v. Kennedy, 81 T. 144 (16 S. W. 740).

When a case has been tried by the court without a jury, the admission of incompetent testimony will not require a reversal of the judgment when there was competent evidence sufficient to authorize its rendition, unless it is manifest from the record that the improper testimony had a controlling effect upon the action of the trial judge.

NOTE.—It will be noticed that the rule in *Wagoner v. Rupley* would require a reversal, unless the record affirmatively shows that the judge did not consider the improper testimony, while that of *Moore v. Kennedy* requires the appellate court to affirmatively find from the record that the judge was influenced by the improper testimony.

The case of *Moore v. Kennedy* is in accord with the later cases. See *Gray v. Shelby*, 83 T. 407 (18 S. W. 809); *Andrews v. Key*, 77 T. 35 (13 S. W. 640); *McNeil v. O'Connor*, 79 T. 230 (14 S. W. 1058); *Garcia v. Gray*, 67 T. 286 (3 S. W. 42); *Barth v. Green*, 78 T. 681 (15 S. W. 112); *Beham v. Ghio*, 75 T. 90 (12 S. W. 996); *St. L. A. & T. Ry. Co. v. Turner*, 1 C. A. 630 (20 S. W. 1008); *Railway v. Smith*, 74 T. 279 (11 S. W. 1104).

§ 501. *Walker v. Herron*, 22 T. 56.

In an action for damages through negligence, the burden is on the plaintiff to show that he was not guilty of contrib-

utory negligence, or that the injury was wholly attributable to the defendant's fault.

Overruled: G. C. & S. F. Ry. Co. v. Sheider, 88 T. 152 (30 S. W. 902).

The burden is on the defendant to show that the plaintiff was guilty of negligence contributing to his injuries.

NOTE.—The rule laid down in the *Sheider* case is now followed by the supreme court, and all the courts of civil appeals. Prior to that decision several cases followed the rule announced in *Railway v. Spicker*, 61 T. —, that the burden was on the defendant to show plaintiff's contributory negligence, unless his own case exposed him to a suspicion of negligence, in which event, the burden was on plaintiff to clear off such suspicion. This distinction is also overruled in the *Shieder* case, and the burden is placed on the defendant in all cases to prove contributory negligence. Of course if the plaintiff's pleadings, or the evidence, show facts that make him guilty of negligence, as a matter of law, he is not entitled to recover, unless he shows some fact rebutting the presumption of negligence which the law has raised against him. *Railway v. Shieder*, 30 S. W. 904.

See *Dallas & Wichita Ry. v. Spicker*, § 101; *Mo. Pac. Ry. v. Foreman*, 46 S. W. 836.

§ 502. *Wallace v. City of Dallas*, 2 U. R. 424.

In exercising the lawful powers of causing streets to be raised and a new channel to be constructed for draining the surface water, the city does not become liable for consequential damages caused by surface water to plaintiffs' premises.

Contra: *Cooper v. City of Dallas*, 83 T. 239.

The city of Dallas, in the exercise of its powers, graded certain of its streets, raising them above the surface of adjoining lots, thereby causing the overflow of said lots and subsequent damage. In a suit by the owners for damages so caused, *held*, that the city was liable for the injury sustained under the constitutional provision that "no person's property shall be taken, damaged or destroyed, or applied to public use, without adequate compensation being made."

§ 503. *Waltee v. Weaver*, 57 T. 571.

The certificate of the separate acknowledgment of a married woman is conclusive of the facts therein stated, where the conduct of the grantee is in good faith, and he pays a valuable and adequate consideration for the property.

Questioned: *Webb v. Burney*, 70 T. 325 (7 S. W. 841).

We do not believe our courts, in speaking of the necessity of a valuable consideration in connection with the inviolability of the officer's certificate to a married woman's acknowledgment, used the expression in the sense in which it is used in respect to innocent purchasers acquiring property without notice of a prior deed.

§ 504. *Walters v. G. H. & S. A. Ry. Co.*, 1 W. & W., sec. 756.

Where an accommodation acceptor pays a draft his action against the drawer is for a debt grounded upon a contract in writing, which constitutes a material and essential part of his case, and is not barred until four years from the maturity of the original obligation.

Overruled: *Faires v. Cockrill*, 88 T. 428 (35 S. W. 191).

Cockrill, Faires and others executed a written obligation to the S. A. & A. P. Ry. Co., by which they agreed to secure right of way and depot grounds and pay for the same, to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract and sued Faires, and the other signers for their share of the money paid. *Held*, that the railway company could have maintained an action there, but Cockrill could not do so for his cause of action was upon the implied promise of Faires and others to indemnify him for whatever he should pay in their behalf, and his cause of action was barred by the statute of limitation of two years.

NOTE.—*See note, Sublett v. McKinney*, § 453; *Beville v. Boyd*, 91 T. 439 (44 S. W. 287).

§ 505. *Walters v. Texas B. & L. Ass'n*, 29 S. W. 51.

Attorney's fees provided for in a mortgage on a homestead to secure the cost of improvements thereon, can not be enforced against the homestead.

Contra: American Mut. B. & L. Ass'n v. Harn, 62 S. W. (C. A.) 74.

A stipulation for attorney's fees in a mechanic's lien note is enforceable as a part of the lien against the homestead.

NOTE.—*Owing to the conflict between these cases the supreme court has granted a writ of error in the latter case, and the question will doubtless be decided by that court in October (1901).*

See *Sproule v. McFarland*, 56 S. W. (C. A.) 693; *Bulard v. Mayne*, 49 S. W. (C. A.) 522.

§ 506. *Ward v. Pollock*, 2 U. R. 311.

A landlord leased a house for a term of two years, the rents being payable quarterly. The rent for the first year was paid, and part of the second year. *Held*, that he only had a lien upon the property of the tenant for the rent in arrears, and for the current quarter which was in the process of becoming due, but he had no lien for the future rents to become due, under the terms of the lease.

Contra: *Marsailles v. Pittmann*, 68 T. 624.

The law gives the landlord a preference lien upon all of the property of the tenant on the premises, not only for rents that are due, but that which is to become due for the entire term of the lease, and that lien is superior to that of the tenant's vendee.

NOTE.—*Green v. Bear Bros., King's Conflicting Cases*, vol. 1, sec. 90.

The lien under the present statute is limited to the current year of the tenancy. R. S., 3251.

§ 507. *Warren v. Kelly*, 17 T. 544.

In an action for forcible entry and detainer, under the statute, where the plaintiff shows that he was in possession of the premises and that the defendant took advantage of his casual absence to seize the possession, which he forcibly detained, it is no answer to show that the title is not in the plaintiff, but in another by whose permission defendant took possession.

Contra: *Heironimus v. Duncan*, 33 S. W. 287.

A trespasser has only the actual possession to rely upon, and, if the owner can acquire the actual possession, without

using force, even though he does not obtain the consent of the trespasser to do so, such entry can not be forcible when it was peaceably obtained, and no action will lie against the owner therefor.

NOTE.—*Gulledge v. White*, 73 T. 498; *Holmes v. Holloway*, 21 T. 659; *Cooper v. Marchbank*, 22 T. 4; *Hays v. Porter*, 27 T. 94; *Smith v. Ryan*, 20 T. 665; *Clark v. Snow*, 24 T. 243; *Wyatt v. Monroe*, 27 T. 270; *Clark v. Hutton*, 28 T. 126; *Land Co. v. Turman*, 53 T. 622; *Hoffman v. Blume*, 64 T. 336.

Upon a careful examination of the case of Heironimus v. Duncan, it will be found that so much of the opinion above quoted was not necessary to the decision of the case. The expression that, "if the owner can acquire the actual possession without force," would necessarily imply that the justice could hear proof to determine who was the owner and who the trespasser. If so, the justice must pass upon the title, which he could not do. Smith v. Ryan, 20 T. 665.

§ 508. *Wartelsky v. McGhee*, 30 S. W. (C. A.) 69.

Suit was brought by a married woman against a liquor dealer, on his bond for sale of liquor to her son. Her husband was joined *pro forma*, as a party plaintiff. *Held*, that as the recovery was community property, the wife was neither a necessary nor a proper party, and that the *case should be reversed* because the trial court did not sustain the exception directed to the wife's right to maintain the suit.

Contra: *San Antonio St. Ry. Co. v. Helm*, 64 T. 147.

While the wife is neither a necessary nor a proper party to a suit to recover money that is community property, and an exception to her joinder in the suit should be sustained, yet it is not for every erroneous ruling that a judgment *should be reversed*; this should be done only in those cases in which the opposite party has probably been injured thereby. A judgment in favor of or against the husband and wife is a complete bar to any suit that might be thereafter brought by either of them, and does not ordinarily operate to the prejudice of the defendant so as to require a reversal. If the costs are increased by the joinder of the wife, or the defendant is shown in any other manner to have been prejudiced, the case should be reversed, but in absence of such showing it should be affirmed.

NOTE.—See *Wright v. Tipton*, 92 T. 168 (46 S. W. 629), where held that wife can bring suit alone for sale of liquor to her husband.

§ 509. *Waterbury v. City of Laredo*, 60 T. 519.

A contract of a city with an attorney, whereby he was to receive a certain portion of the earnings of a ferry, gave him no authority to interfere with the municipal control thereof; nor would the courts interfere except to prevent fraud or a gross abuse of discretion.

Contra: *Waterbury v. City of Laredo*, 68 T. 565 (5 S. W. 81).

On this appeal it was held that the same contract referred to (60 T. 519) was *ultra vires* because it placed it beyond the power of the city to establish a free ferry, or to charge such tolls only as would defray the expense of operating the franchise if it so desired.

§ 510. *Waters v. Spofford*, 58 T. 122.

The act of the fifth of February, 1841, had reference to acknowledgments and records made before its passage, as well as the records made after that time upon prior acknowledgments. The statute was intended to remove objections to the sufficiency of the registration of deeds upon defective acknowledgments, and to provide for their recording in the future. It was a healing and enabling statute and ought to be construed liberally.

Overruled: *McClevy v. Cryer*, 8 T. C. A. 447 (28 S. W. 691).

The act of February 5, 1841, merely validates the registry of deeds made prior to the adoption of the act, and then provides for the registration of instruments "hereafter to be made and recorded." There is no provision validating the acknowledgments of instruments made anterior to the passage of the act, the whole object and intent of the law being to render legal the registry of instruments made before the passage of the act, and to provide for the manner of acknowledgments, and proof and proper registration of the instruments executed after the passage of the act.

NOTE.—*Butler v. Dunaga*, 19 T. 565.

§ 511. *Watkins v. Davis*, 61 T. 414.

If the old homestead is sold with the intention of reinvesting the money in another, the unpaid purchase money can not be reached by garnishment, or subjected by other process to the payment of debts.

Contra: *Kirby v. Giddings*, 75 T. 679 (13 S. W. 27).

Where the old homestead is voluntarily sold, although with the intent of reinvesting the proceeds in another, such proceeds are not exempt from garnishment.

NOTE.—*The following cases are in accord with the overruling case: Whillenberg v. Lloyd*, 49 T. 633; *Womack v. Starkes*, 35 S. W. 82; *Mann v. Kelsey*, 71 T. 609 (12 S. W. 43); *Moursund v. Preiess*, 84 T. 554 (19 S. W. 775); *Chase v. Swayne*, 88 T. 222 (30 S. W. 1049); *Whitselle v. Jones*, 39 S. W. 205; *Schneider v. Bray*, 59 T. 668.

The case of Young v. Matier, 3 W. & W., sec. 354, is in accord with the overruled case. Since the conflict arose, the law has been changed by amendment of April 26, 1897, providing, "That the proceeds of the voluntary sale of the homestead shall not be subject to garnishment, or forced sale, within six months after such sale." Prior to the enactment of the above law the decisions were uniform, that the proceeds of involuntary sales were exempt. Does the new law change the rule announced in those decisions? In other words, suppose the homestead is sold at forced sale—say for the payment of the purchase-money—will the excess be liable to garnishment?

§ 512. *Watson v. McLane*, 45 S. W. 176.

A personal judgment against a non-resident, upon citation by publication, is void, and its nullity may be shown in a collateral attack, notwithstanding the fact that the judgment may recite that service was duly perfected, and it may not appear from the record that the defendant was a non-resident.

Contra: *Iams v. Root*, 22 C. A. 413 (55 S. W. 411)—Writ of error refused.

In this case the defendants deraigned title through an execution sale under a judgment for costs against one Brock, who was cited by publication, as shown by the recital in the said judgment. The plaintiffs offered to prove that Brock was a non-resident at the time suit was filed and service had, but the court of civil appeals (First District), holds that such

testimony was inadmissible because it does not affirmatively appear from the record of said cause that the court was without jurisdiction of the person of the defendant, and evidence outside the record will not be heard to contradict the presumption that the court had authority to render the judgment.

NOTE.—*Martin v. Burns*, 80 T. 678 (16 S. W. 1072), is in accord with *Iams v. Root*, while in the case of *Jones Lumber Co. v. Rhoades*, 41 S. W. 105, Judge Williams (then justice, court of civil appeals) seems to have entertained the same view as held in *Watson v. McLane*. He says: "But if the judgment always conclusively proves jurisdiction over parties, no evidence could be heard to show that a particular party was a non-resident, unless the record should affirmatively show it. This was once held by many courts as the rule applicable to domestic judgments, but it can hardly be maintained that it is now the law."

§ 513. *Watt v. Downs*, 36 T. 116.

When an incumbrance on property of an estate is discharged by the incumbrancer bidding off the property, and the bid being applied to his claim, the personal representative of the estate is not entitled to the statutory commissions on the amount, as though he had received and paid it out in cash.

Overruled: *Huddleston v. Kempner*, 87 T. 372 (28 S. W. 976).

See *James v. Corker*, § 253.

§ 514. *Webb v. Mallard*, 27 T. 80.

A sale of property, under an execution issued after the death of the judgment debtor, it not void.

Contra: *Hooper v. Caruthers*, 78 T. 438 (15 S. W. 98).

See *Taylor v. Snow*, § 458.

§ 515. *Webster v. Willis*, 56 T. 468.

In a suit against heirs for the debt of the ancestor, the judgment is *in personam*, to the extent of the value of the property received, and not *in rem*.

Contra: *Blinn v. McDonald*, 92 T. 604 (50 S. W. 931).

See, for full discussion, under *Mayes v. Jones*, § 329. The case of *Webster v. Willis* is distinguished in having been decided under a different statute (50 S. W. 931).

§ 516. **Weekes v. Sunset Brick & Tile Co.**, 22 C. A. 556
(56 S. W. 247).

When a plea to the jurisdiction is filed, and the case continued at the first term thereafter without prejudice, the plea should be disposed of at the next term of the court, and it is waived by a continuance at such next term without reference to it.

Contra: **Dorroh v. McKay**, 56 S. W. (C. A.) 611.

A continuance at the first term, without prejudice to the pleas of privilege, operate to postpone them until the trial, and continuances at subsequent terms do not operate to waive them.

NOTE.—In **Aldredge v. Webb**, 92 T. 122 (46 S. W. 224), it was held that a continuance by consent without calling the court's attention to the plea, was a waiver of it. In **Reddick v. Bryant**, 16 C. A. 241 (41 S. W. 78), defendant's counsel was not present when the case was called at the first term and plaintiff's counsel had the case "continued generally," in which action defendant's attorney acquiesced when he heard of it a few minutes after the continuance was entered. The plea was not called to the attention of the court at that term, but it was held that this was not a continuance by consent and, therefore, the plea was not waived. It is difficult to reconcile this case with the ruling laid down in **Aldredge v. Webb**, to the effect that the law imposes the duty of demanding action on such a plea at the time the statutes and rule require, and a failure so to do, is a waiver thereof. Judge Williams' view in **Reddick v. Bryant** seems to be that it would take some affirmative action on the part of the defendant, such as continuance by consent, to waive the plea, and while the case of **Aldredge v. Webb** was one where a continuance was agreed to by the defendant, the supreme court's construction of the statute and rule seems to be, that it takes some affirmative action on the part of the defendant at the first term by calling the court's attention to the plea in order to keep it from being waived by law. This is also held in **Spencer v. James**, 31 S. W. 542, where the plea was waived by allowing two terms of court to pass without invoking the action of the court thereon.

See §§ 7, 24, 170, 379, 398 and 492.

§ 517. **West v. Cole**, 50 S. W. (C. A.) 151.

West first brought a suit against some of the defendants in the second suit, but not all, to recover certain tracts of land

and to declare the instruments conveying that land to the defendants, fraudulent and void. In this first suit, judgment was rendered against him on the ground that the deeds attacked were not void. He afterwards brought the second suit to recover a tract of land conveyed by these deeds but not involved in the first suit, and also in this suit sought to declare the same deeds void. It was held that the first suit was not *res adjudicata* of the question involved.

Contra: Hanrick v. Gurley, 93 T. 458 (56 S. W. 330; Id. 55 S. W. 119).

Nicholas Hanrick was a party to a suit involving 100 acres of the Zarza grant, and in this suit sought to maintain his title as an heir of Edward Hanrick. A demurrer was presented and sustained against him on the ground that the facts alleged by him showed that no title had descended to him by inheritance from Edward Hanrick. In another suit he claimed other lands by the same right of inheritance, and it was held that he was estopped. Justice Williams, in this case, lays down the rule as follows: "While the cause of action in that case was not the same as that now asserted, the question as to *Nicholas Hanrick's right to inherit from Edward* was and is directly involved, and common to both cases, and was expressly adjudicated in the former, although the judgment of the court was, as we formerly held, only a denial of the right to recover the land then in controversy; its estoppel is much broader, and concludes the parties upon every question which was directly in issue, and was passed upon by the court in arriving at its judgment.

§ 518. Western Paper Bag Co. v. Johnson, 38 S. W. (C. A.) 364.

Where a foreign corporation ships goods to a point in Texas in carload lots, and then sells them to different buyers such transaction is not interstate commerce, and, therefore, the company must show that it has received a permit to do business in this state.

Contra: Miller v. Goodman, 91 T. 41 (40 S. W. 718).

In this case, the sales were made for the foreign corporation by agents who, it seems, solicited the orders in this state and forwarded them to the company, and it was held to be interstate commerce. It appears from the statement of the

certified question that the goods were sold before they were shipped, and if so, the case of *Western Paper Bag Co. v. Johnson*, does not state a contrary doctrine, because the court in that case based its ruling on the fact that the sales were not made *prior* to but *after* the goods were shipped into this state. However, in the opinion of *Miller v. Goodman*, Judge Brown says: "This is a case of sale by a corporation created by another state, of goods manufactured in that state and shipped into the state of Texas. *It matters not whether the goods were sold before they were shipped, or shipped to the state and then sold.* It is equally interstate commerce."

§ 519. *Western Mfg. Co. v. Curtis*, 1 App. Civ. C., sec. 740.

One who purchases a note for value, before maturity, under the presumption that he was a purchaser without notice, can not be defeated by the defense of usurious contract.

Contra: *Miles v. Kelley*, 40 S. W. (C. A.) 599.

A usurious note is void as to the entire interest, even in the hands of an innocent holder.

§ 520. *Western U. Tel. Co. v. Adams*, 75 T. 531
(12 S. W. 857).

In a telegraphic message conveying information of sickness and death, if the language is sufficient to suggest that a near relationship existed between the person mentioned in the message and the person addressed, and that the object of the communication was to afford the latter the opportunity of going to his relative, it is sufficient, without further notice, to render the company liable for damages; or for any mental suffering that should result to him from his being deprived of the consolation which his visit would have afforded, provided the negligence of the company in failing to make a prompt delivery was the cause of the injury.

Limited: *Western U. Tel. Co. v. Kirkpatrick*, 76 T. 217
(13 S. W. 70).

It was not the purpose of the court, in the case above cited, to depart from the ruling that in these actions only such damages are recovered as were in contemplation of the parties at the time the contract was made. We intended merely to hold that from the face of the message in that case, the company was to be presumed to have contemplated the damages which

were claimed to have resulted from the breach of the contract of delivery.

NOTE.—*Telegraph Co. v. Moore*, 76 T. 68 (12 S. W. 949); *Mitchell v. Telegraph Co.*, 5 C. A. 527 (24 S. W. 550); *Telegraph Co. v. Carter*, 85 T. 585 (22 S. W. 961); *Telegraph Co. v. Coffin*, 88 T. 97 (30 S. W. 896); *Telegraph Co. v. Edsall*, 74 T. 332 (12 S. W. 41); *Telegraph Co. v. Richardson*, 79 T. 652 (15 S. W. 689); *Telegraph Co. v. Gossett*, 15 C. A. 52 (38 S. W. 536); *Telegraph Co. v. Sheffield*, 71 T. 574 (10 S. W. 752); *Telegraph Co. v. Zane*, 6 C. A. 585 (25 S. W. 722); *Telegraph Co. v. Jones*, 81 T. 272 (16 S. W. 1006); *Telegraph Co. v. Nations*, 82 T. 541 (18 S. W. 709); *Telegraph Co. v. Rosentreter*, 80 T. 418 (16 S. W. 75); *SoRill v. Telegraph Co.*, 55 T. 513; *Telegraph Co. v. Bowen*, 84 T. 478 (19 S. W. 554); *Martin v. Telegraph Co.*, 1 C. A. 147 (28 S. W. 60); *Telegraph Co. v. Ward*, 4 W. & W., sec. 317; *Telegraph Co. v. Haman*, 2 C. A. 101 (20 S. W. 1133); *Telegraph Co. v. Nagle*, 11 C. A. 539 (32 S. W. 707); *Telegraph Co. v. Linn*, 87 T. 7 (26 S. W. 490); *Telegraph Co. v. Luck*, 91 T. 179 (41 S. W. 469); *Telegraph Co. v. Proctor*, 6 C. A. 300 (25 S. W. 811).

§ 521. *Western U. Tel. Co. v. Brown*, 71 T. 723
(10 S. W. 323).

Although a message advises of the death of a party, the company is not chargeable with notice of any relationship between the sender and the deceased, unless such relationship is disclosed in the message.

Overruled: *Western U. Tel. Co. v. Carter*, 85 T. 585 (22 S. W. 961).

Here, the *Brown* case is expressly overruled, and it is held that when a message relates to sickness and death, there accompanies it a common-sense suggestion that it is of importance, and that the person addressed has in it a serious interest. The company is charged with notice of the relationship and the purposes for which the message is sent.

See *Tel. Co. v. Nations*, § 523.

§ 522. *Western U. Tel. Co. v. Feegles*, 75 T. 537
(12 S. W. 860).

In a telegraphic message conveying information of sickness and death, if the language is sufficient to suggest that a

near relationship existed between the person mentioned in the message and the person addressed, and that the object of the communication was to afford the latter the opportunity of going to his relative, it is sufficient, without further notice to render the company liable for damages, or for any mental suffering that should result to him from his being deprived of the consolation which his visit would have afforded, provided the negligence of the company in failing to make a prompt delivery was the cause of the injury.

Limited: *Western U. Tel. Co. v. Kirkpatrick*, 76 T. 217 (13 S. W. 70).

See *W. U. Tel. Co. v. Adams*, § 520.

§ 523. *Western U. Tel. Co. v. Nations*, 82 T. 539 (18 S. W. 709).

In a suit against a telegraph company for failure to deliver the following message: "Your stepfather died this morning," it was *held*: First, the telegraph company was sufficiently put upon notice of the circumstances making important the speedy delivery of the message. Second, the message could be regarded as a request to the son to come to his mother in her distress. Third, that the mental suffering caused by the son's not reaching his mother to aid her in the funeral and burial of his stepfather was ground for damages.

Overruled: *W. U. Tel. Co. v. Luck*, 91 T. 178 (41 S. W. 469).

A message by Mina Luck, wife of the sick man, to her daughter, Bertha Wincker, "Luck is very sick; come home at once," was not sufficient to inform the company that Bertha Wincker was the daughter of Mina Luck, nor to enable the latter to recover for mental anguish for delay in its delivery and consequent failure to obtain her daughter's consolation at the death and funeral of her husband.

NOTE.—*W. U. Tel. Co. v. Carter*, 85 T. 580 (22 S. W. 961); *Rowel v. W. U. Tel. Co.*, 75 T. 26 (12 S. W. 534); *Loper v. Tel. Co.*, 70 T. 689 (8 S. W. 600); *Tel. Co. v. Sheffield*, 71 T. 570 (18 S. W. 572); *Daniel v. Tel. Co.*, 61 T. 452; *Tel. Co. v. Brown*, 71 T. 723 (10 S. W. 323); *Ib. v. Broesche*, 72 T. 654 (10 S. W. 734); *Ib. v. Carter*, 2 T. C. A. 624 (21 S. W. 688); *Ib. v. Edsall*, 74 T. 329 (12 S. W. 41); *Ib. v. Moore*, 76 T. 66 (12 S. W. 949); *Ib. v.*

Feegles, 75 T. 537 (12 S. W. 860); *Ib. v. Adams*, 75 T. 531 (12 S. W. 857); *Ib. v. Kirkpatrick*, 76 T. 217 (13 S. W. 70); *Ib. v. Rosentreter*, 80 T. 406 (16 S. W. 25); *Potts v. Tel. Co.*, 82 T. 545 (18 S. W. 604); *Tel. Co. v. Carter*, 85 T. 580 (22 S. W. 961).

Overruling partially: *Tel. Co. v. Brown*, 71 T. 723; *Tel. Co. v. McKinney*, 2 C. A. 644; *Harrison v. Tel. Co.*, 3 C. A. 43; *Tel. Co. v. Ward*, 4 C. A. 317; *Ib. v. Williford*, 2 C. A. 574; *Ib. v. McLeod*, 22 S. W. 988; *Ib. v. Carter*, 85 T. 580; *Ib. v. Parlin*, 25 S. W. 40; *Ib. v. Linn*, 23 S. W. 895; *Ib.*, 26 S. W. 490; *Ib. v. Smith*, 26 S. W. 216; *Ib. v. Jobe*, 6 C. A. 403; *Ib. v. Zane*, 6 C. A. 585; *Tel. Co. v. Porter*, 26 S. W. 866; *Ib. v. Motley*, 27 S. W. 51; *Ib. v. Coffin*, 30 S. W. 896; *Ib. v. Williford*, 27 S. W. 700; *Ib. v. May*, 27 S. W. 760; *Ib. v. Grocer Co.*, 28 S. W. 905; *Ib. v. Grigsby*, 29 S. W. 406; *Swain v. Tel. Co.*, 34 S. W. 783; *Tel. Co. v. Russell*, 31 S. W. 698; *Carver v. Tel. Co.*, 31 S. W. 432; *Tel. Co. v. Smith*, 33 S. W. 742.

The opinion in the overruling case, after holding in substance as above quoted, proceeds as follows: "In the case of *W. U. Tel. Co. v. Nations*, it was held that a telegram by a mother to her son stating that the stepfather of the person addressed was dead, was sufficient to put the telegraph company on notice that the message was intended as a summons to the son to attend the mother in her distress, but we believe that that case is not sustained upon principle nor upon any authority, and it is therefore overruled."

§ 524. *Western U. Tel. Co. v. Proctor*, 6 C. A. 25
(25 S. W. 811).

The statutes of this state, requiring the issuance of license and the performance of the ceremony of marriage by implication, excludes any other form of marriage. Therefore, there can be no valid common-law marriage in this state.

Contra: *Chapman v. Chapman*, 11 C. A. 393 (32 S. W. 564).

The issuance of a marriage license is not essential to the validity of the marriage, but parties can contract a common-law marriage, and the same will be held valid.

NOTE.—Texas has, at different times recognized three forms of marriage: by sacrament, by bond, and by license. In other words, by ecclesiastical law, by civil contract, and by stat-

utory law. The first and second, only, were recognized by the law of Spain, the first, only, was recognized by the law of Mexico. *Smith v. Smith*, 1 T. 621; *Nichols v. Stewart*, 15 T. 230. When Texas achieved its independence, an ordinance was passed on the sixteenth of January, 1836, conferring upon all judges, alcaldes, commissarios, and ministers of the gospel, the power to celebrate the rites of matrimony, in the presence of not less than three disinterested witnesses, two certificates to be made by the officer officiating and attested by the witnesses, one to be given to the bride and the other filed with the archives of the municipality. The ordinance also validates all former marriages by bond or otherwise, celebrated under laws theretofore existing. *Sayles Early Laws*, vol. 1, article 212, on the fifth of June, 1837, and fifth of February, 1841, were passed providing for marriage by license, and which is the law now in force. For a long time it was a mooted question whether the acts of 1837 and 1841, providing for a marriage by license, did not, at least by implication, prohibit any other form of marriage. The question was for the first time decided in the affirmative by the court of criminal appeals in the case of *Dumas v. State*, 14 T. A. 464, and was followed by the overruled case rendered by the court of civil appeals. They appear to find some support in some of the earlier decisions, although the exact point was not in issue, or necessary to the decisions. *Nichols v. Stewart*, 15 T. 225; *Smith v. Smith*, 1 T. 621; *Sapp v. Newsom*, 27 T. 537; *Lewis v. Ames*, 44 T. 338. However, the overwhelming weight of authority is in favor of the common-law marriage, and it may now be regarded as settled that the statutes, with reference to the issuance of license and the solemnization of the marriage ceremony, are merely directory, and there may be a valid marriage in this state without compliance with them. *Cumby v. Garland*, 6 C. A. 579 (25 S. W. 675); *Ingersol v. McWillie*, 9 C. A. 555 (30 S. W. 56); *Holden v. State*, 29 S. W. 793; *Nixon v. Land Co.*, 84 T. 411; *Shreck v. Shreck*, 32 S. W. 289; *Cumley v. Henderson*, 6 C. A. 519 (30 S. W. 56); *Bank v. Sharpe*, 12 C. A. 223 (33 S. W. 676); *Tarpley v. Poage*, 2 T. 149; *G. H. & S. A. R. R. v. Cody*, 51 S. W. 329, 50 S. W. 135; *Routh v. Routh*, 57 T. 589; *Gates v. Houston*, 3 T. 449; *Primm v. Stewart*, 7 T. 183; *Clements v. Crawford*, 42 T. 604; *Oldham v. McIver*, 49 T. 564; *Honey v. Clark*, 37 T. 707; *Timmins v. Lacey*, 30 T. 137; *Scharz v. Allen*, 37

S. W. 986; *Bonds v. Foster*, 36 T. 69; *Carroll v. Carroll*, 20 T. 740; *McGowan v. Bush*, 17 T. 202; *Morgan v. Morgan*, 1 C. A. 315 (21 S. W. 154); *Simons v. State*, 20 S. W. 398; *Cuneo v. Cuneo*, 59 S. W. 284. The courts of this state have rendered a number of inconsiderate and illogical opinions concerning marriage on other questions than the form of marriage. For instance, in the case of *Smith v. Smith*, it was held that on the death of the husband, the second wife, to whom he was married during the life of the first wife, was not only entitled to her community half of the property, but had the right as survivor to administer.

The innocent putative wife assisted in earning the community estate and, therefore, she, at least in equity, should share as partner in the profits made by the marital partnership, but why should she to the exclusion of the lawful wife, be given the right to administer, when that right is by statute conferred upon the lawful wife? The second marriage was unlawful and, therefore, not voidable but absolutely void. An unlawful contract is void as to all persons and for all purposes, and the courts will not enforce any of its provisions regardless of the guilt or innocence of the contracting party asking relief.

In the case of *McGowan v. Bush*, where a note sued on was given in settlement of a charge of criminal connection, it was held that it devolves on the payee to prove the actual marriage, for neither confession, cohabitation, nor general reputation would be evidence.

While in the case of *G. H. & S. A. Ry. Co. v. Cody*, where the wife sued for damages resulting from the death of her husband, it was held that where a man and woman entered into an agreement to become husband and wife, and lived together in pursuance of such an agreement, and held themselves out as such to the public, the same constituted a lawful marriage and she was entitled to recover. It is difficult to understand why the husband, in the first case, could not be allowed to prove a common-law marriage as a basis for recovery, while in the second case the wife can recover upon proof of a common-law marriage.

In the case of *Wells v. Hardy*, 51 S. W. 503, the court of civil appeals, in a suit for breach of promise of marriage, held the plaintiff not entitled to recover, by reason of the female being a minor over eighteen and under twenty-one years of age, notwithstanding the statute expressly authorizes marriage in

cases of the male, twenty-one years of age, and of the female, eighteen years of age. Thus it is in effect held that while the law empowers the party to contract, although a minor, it will not enforce the contract or award damages for its breach on the ground of minority.

See *Smith v. Smith*, § 430.

§ 525. *Westmoreland v. Richardson*, 2 C. A. 175.
(21 S. W. 167).

A judgment is competent evidence to establish a plea of *res adjudicata*, although an appeal has been taken from it.

Contra: *Texas Trunk Ry. Co. v. Jackson*, 85 T. 605 (22 S. W. 1030).

See *Thompson v. Griffin*, § 482, and note.

§ 526. *Wharton County v. Ahldag*, 84 T. 12 (19 S. W. 291).

Under article 2403, Revised Statutes, the county treasurer is entitled to commissions on county scrip made receivable for county taxes, and coming to him from the hands of the collector, because this statute provides for commissions for receiving moneys, and the scrip performs the functions of money in paying certain taxes. He would also be entitled to commissions on any scrip paid, or applied by him as required by law, and as directed by the court.

Overruled: *McKinney v. Robinson*, 84 T. 497 (19 S. W. 772).

A county treasurer is not entitled to commissions on account of scrip received by him from the tax collector in the payment of county taxes, and by him turned over to his successor.

§ 527. *Whitehead v. Fisher*, 64 T. 638.

As between the vendor, holding an unpaid note secured by a vendor's lien, and his assignee of another note given at the same time and secured by a like lien upon the same land, the latter is entitled to priority of payment.

Limited and questioned: *Douglass v. Blount*, 93 T. 499 (56 S. W. 334).

The statement in *Whitehead v. Fisher*, with reference to the priority of an assignee, is dicta, because in that case there was an express agreement that the assignee should have priority.

The question is not decided, but Chief Justice Gaines' opinion indicates that the supreme court does not approve the doctrine referred to.

See *Salmon v. Downs*, § 411, and note.

§ 528. *Wichita Val. Ry. Co. v. Peery*, 27 S. W. 75.

After the submission of the case on appeal, a certiorari to perfect the record will not be granted.

Contra: *Western U. Tel. Co. v. O'Keefe*, 87 T. 423 (28 S. W. 945).

See *McMickle v. Bank*, § 318.

§ 529. *Wiley v. Prince*, 21 T. 637.

Where the property is alienated by the wife in fee, and a consideration passes, it is necessary for the security of titles that the certificate of the officer should be held conclusive, unless fraud or wrong, charged to impeach the alienation, was known to the grantee. It seems to be doubtful whether this be the rule where no consideration passes, as where the wife becomes surety to pay the debts of the husband antecedently contracted.

Questioned: *Webb v. Burney*, 70 T. 322 (7 S. W. 841).

When the husband and wife execute, in due form, a deed conveying the homestead, the wife can not impeach the certificate of the officer taking her acknowledgment, if the same be in due form, where there is a valuable and adequate consideration for the deed. If the consideration be the discharges by the deed of a pre-existing debt, it will be sufficient, unless there was such gross inadequacy of price as to induce the belief that undue influences had been used to induce her execution of the deed, in which event the certificate of the officer may be impeached and shown to be false. But the mere fact that a man, by imposing upon his wife through misrepresentations as to the character of the instrument, induces her to sign a conveyance of the homestead in payment of a pre-existing debt, coupled with the fact that the notary did not comply with the law in taking her acknowledgment, will not affect the rights of the purchaser, if he is ignorant of the husband's fraud.

NOTE.—See *Waltee v. Weaver*, § 503, and *Kennedy v. Davis*, § —, both of which are in accord with the questioned case.

See the following authorities in support of the questioning case: Hartley v. Fresh, 6 T. 208; Shelby v. Burtis, 18 T. 644; Pool v. Chase, 46 T. 210; Williams v. Pouns, 48 T. 144; Kocourek v. Marak, 54 T. 205; Brewster v. Davis, 56 T. 478; Preece v. Fort, 60 T. 464; Cole v. Bammel, 62 T. 112; Henderson v. Terry, 62 T. 281; Stringer v. Swenson, 63 T. 13; Hurt v. Cooper, 63 T. 362; Coker v. Roberts, 71 T. 601; Texas L. & L. Co. v. Blalock, 76 T. 85 (13 S. W. 12); Gray v. Shelby, 83 T. 407 (18 S. W. 809); Herring v. White, 6 C. A. 251 (25 S. W. 1016); Freiberg v. DeLamar, 7 C. A. 269 (27 S. W. 151); McDaniel v. Horrell, 1 U. C. 526; McKellar v. Peck, 2 U. C. 194; Summers v. Sheern, 37 S. W. 247.

§ 530. *Wiley v. Wiley, 33 T. 358.*

A divorce having been decreed by the district court, the wife was allowed alimony of \$50 per annum for twelve years, from which judgment the wife appealed to the supreme court. That court affirmed the decree divorcing the parties, but reverses and renders, as to the alimony, decree that the husband pay annually to the wife, \$100 as alimony during her life, or until she may marry, and enjoin the husband from disposing of the property for the purpose of avoiding the payment.

Contra: Pape v. Pape, 13 C. A. 99 (35 S. W. 479).

Our statutes make no provision for permanent alimony, and it has been held that in the absence of direct statutory authority, a decree for alimony can not be appended to a decree dissolving the marriage. The only provision made for alimony is during the pendency of the suit for divorce, and it is provided that it shall continue until final decree should be made in the case.

§ 531. *Williams v. Craig, 10 T. 447.*

This case was brought up by writ of error sued out after the time allowed by law, and although this fact was referred to in the opinion, the question was not treated as a jurisdictional one, but the cause considered and decided by the court because no motion had been made to dismiss same.

Contra: Carlton v. Ashworth, 45 S. W. 203.

Where the petition for a writ of error is filed after the time allowed by law, the question is a jurisdictional one, and the appellate court will dismiss the cause of its own motion.

NOTE.—*Garce v. Ruffington*, 25 S. W. 317; *Fine v. Freeman*, 83 T. 529 (18 S. W. 963); *Schleicher v. Runge*, 90 T. 456 (39 S. W. 279).

§ 532. *Williams v. Durst*, 25 T. 667.

The payee of a promissory note, who indorses it and afterwards pays and takes it up, stands, with reference to the makers, in the same attitude as if he had never parted with it, his remedy being upon the note and not upon an account for money paid to the use of the maker, and the statute of limitation of two years has no application.

Overruled: *Faires v. Cockrill*, 88 T. 428 (35 S. W. 191).

Cockrill, Faires and others executed a written obligation to the S. A. & A. P. Ry. Co., by which they agreed to secure right of way and depot grounds, and pay for the same, to induce the railway company to enter the town of Flatonio. Cockrill furnished the money called for by the contract and sued Faires and the other signers for their share of the money paid. *Held*, that the railway company could have maintained an action thereon, but Cockrill could not do so, for his cause of action was upon the implied promise of Faires and others, to indemnify him for whatever he should pay in their behalf, and his action was barred by the statute of limitation of two years.

See note to *Sublett v. McKinney*, § 453.

§533. *Williams v. Emberson*, 22 C. A. 522 (55 S. W. 595).

If a requested charge is sufficient to call the court's attention to the issue therein, even though it be incorrectly framed, the court must submit such issue, and its failure so to do is error.

In this case, the court of civil appeals (Fifth district) recognized the special charge requested as erroneous, but says it was error to refuse it because it was sufficient to call the court's attention to an issue on which it had not charged.

Contra: *M. K. & T. Ry. Co. of Texas v. Ferris*, 55 S. W. 1119.—Writ of error refused.

A special charge, which does not correctly submit the issue in conformity with the case made by the pleadings and the evidence, is properly refused, regardless of what may have been omitted from the general charge given by the court.

NOTE.—*The ruling in Railway v. Ferris, has been recognized by the supreme court as the true one. See Railway v.*

Sheider, 88 T. 152. *A party has a right to have the charge applied to the very facts of his case, but the special charge so applying it must be correct, and if it is incorrect in any respect, it is not the duty of the court to separate the good from the bad.* *Williams v. Yoe*, 22 C. A. 446 (54 S. W. 614); *Waco Artesian Water Co. v. Cauble*, 19 C. A. 417 (47 S. W. 538); *Harris v. Bank*, 45 S. W. 311, but where instructions are requested in separate paragraphs though on same piece of paper, the court must give those which are correct. See *S. & E. T. Ry. Co. v. Ewing*, § 410; *Burnham v. Logan*, 88 T. 1 (26 S. W. 46).

The cases of Railway v. Hoard, 49 S. W. (C. A., Fifth District) 142; *Railway v. Webb*, Id., 532 (C. A., Second District); *Railway v. James*, Id., 660 (C. A., Fifth District); *Railway v. Miles*, 50 S. W. (C. A., Fifth District) 169; *Sharrock v. Bitter*, 45 S. W. (C. A., Fifth District) 157, and *Railway v. Harkan*, 45 S. W. (First District) 391, assert the same rule laid down in *Williams v. Emberson*.

§ 534. *Williams v. Sims*, 4 *Wilson's C. C. S.* 151
(17 S. W. 786).

Where the county court has erroneously dismissed an appeal from the justice court, an appeal will lie to the court of appeals without any regard to the amount in controversy.

Contra: *Allen v. Hall*, 60 S. W. (C. A.) 586.

An appeal does not lie to the court of civil appeals, from a judgment of the county court dismissing an appeal from the justice, unless the amount in controversy exceeds \$100.

NOTE.—See *Railway v. Rowley* 3 C. A. 458 (22 S. W. 182), in accord with *Allen v. Hall*; also *Railway v. Farmer*, 22 S. W. 515.

§ 535. *Willis v. Lowry*, 66 T. 542 (2 S. W. 449).

The use of improper language by counsel should be forbidden by the court, though not asked to do so by opposing counsel, notwithstanding he had the right to reply.

Modified: *Moore v. Moore*, 73 T. 382 (11 S. W. 396).

See *Willis v. McNeil*, § 536.

§ 536. *Willis v. McNeil*, 57 T. 465.

It is error for the court to allow counsel to discuss, before the jury, irrelevant questions of fact; nor is the error cured by

approving counsel's failure to interpose objections at the time.
Modified: Moore v. Moore, 73 T. 382 (11 S. W. 396).

When counsel in the argument before the jury goes outside the issues raised by pleading and evidence, opposing counsel should interpose objections at once. But to allow, without objections, the continuation of such a line of argument, would in some cases enable a party to take the chance of a favorable verdict, and which, if adverse to him, could be set aside upon objection which, if promptly made, would have resulted in a correction by the court.

NOTE.—Willis v. Lowry, 66 T. 542 (2 S. W. 449), is in accord with the modified case:

The following are in accord with the modifying case: Moore v. Rogers, 84 T. 2 (19 S. W. 283); Railway Co. v. Greenlee, 70 T. 562 (8 S. W. 129); Bonner v. Glenn, 79 T. 534 (15 S. W. 575); Railway Co. v. Hockaday, 14 C. A. 613 (37 S. W. 475); Railway Co. v. Mitchell, 2 W. & W., sec. 375. See the case of Railway Co. v. Brown, 40 S. W. 613, in which it is stated that the second case modifies the first.

The modified cases appear to be in perfect accord with rule 41: "The court will not be required to wait for objections to be made when the rules as to arguments are violated; but should they not be noticed and corrected by the court, opposing counsel may ask leave of the court to rise and present his point of objection. But the court shall protect counsel from any unnecessary interruption made on frivolous and unimportant grounds."

It would appear to be the proper practice, that when the opposing counsel sees that the trial judge has noticed the improper argument used by his adversary, he need not call his attention to it. But when the improper argument is not heard or noticed, then to call his attention to it and reserve his exceptions. All of the authorities agree in holding that the violation of rule 41, is not reversible error, unless the verdict is against the preponderance of the evidence, or when an excessive verdict seems to have been produced by the violation.

§ 537. Wilson v. Zeigler, 44 T. 661.

In a suit by a resident plaintiff against a non-resident defendant, the jurisdiction does not depend upon the auxillary attachment proceeding. Such a suit, on service by publication, may be prosecuted to judgment, which will be valid as against

the property of the defendant found in the state.

Contra: York v. State, 73 T. 651 (11 S. W. 869).

This case and a number of cases following it, following Pennoyer v. Neff (95 U. S. 723), hold that no personal judgment can be rendered against a non-resident on citation by publication, and if it is sought to reach his property within the state, it must be attacked in order to give the court jurisdiction.

§ 538. Windsor v. O'Connor, 69 T. 571 (8 S. W. 519).

Land is said to be "titled" when a patent is issued, which, on its face, is evidence that the state has parted with its right and conferred it on the patentee. For reasons not appearing on the face of the patent, the grant may be void or voidable, but the land embraced in it is nevertheless "land titled."

Criticised: Howell v. Hanrick, 88 T. 383 (30 S. W. 856).

"This language has particular reference to the section of the constitution quoted above, and that case is decided upon the construction of that section of the constitution."

§ 539. Wolfe v. Lacy, 30 T. 350.

In a suit for damage for breach of a shipment contract, interest is not allowed as a legal incident, but only by way of punitive damages.

Overruled: H. & T. C. Ry. Co. v. Jackson, 62 T. 209.

See *Fowler v. Davenport*, § 138.

§ 540. Woolridge v. Hancock, 70 T. 22 (6 S. W. 818).

In order to enforce a parol sale of land where the vendee has gone into possession, the value of the improvements made by him must exceed the value of the rents.

Contra: LaMaster v. Dickson, 17 C. A. 473 (43 S. W. 911).

See *Ann Berta Lodge v. Leverton*, § 6, and note.

§ 541. Wooters v. Hollingsworth, 58 T. 371.

Where several vendor's lien notes are given for the same land, and are assigned to different parties, all have equal rights to have satisfaction out of the land; and this without reference to the order in which they may have been assigned, or which matured first.

Questioned: Douglass v. Blount, 55 S. W. (C. A.) 526.

• See *Salmon v. Downs*, § 411, and note.

§ 542. *Wright v. Cullers*, 2 W. & W., sec. 750.

Where the plaintiff sues to recover a debt, and in the same suit an attachment is levied upon the real estate of the defendant, *held*, that the county court was without jurisdiction to foreclose the lien or order the sale of the real estate, and to this extent its judgment was a nullity.

Contra: *Hillebrand v. McMahan*, 59 T. 450.

The district court has exclusive jurisdiction for the enforcement of liens on the land created by act of the parties, but it does not have exclusive jurisdiction when the lien is created and fixed by operation of law, such as a lien created by the levy of an attachment.

NOTE.—*The following decisions are in accord with the overruled case*: *Shandy v. Cornales*, 1 C. A. 238; *Newton v. Heidenheimer*, 2 C. A. 126; *Rowan v. Shapard*, 2 C. A. 295; *Miller v. Schneider*, 2 C. A. 372.

The following is in accord with the overruling case: *Grisard v. Brown*, 2 C. A. 584 (22 S. W. 252). *The overruled case was rendered by the old court of civil appeals. The overruling case, by the supreme court, and in order to obviate the effect of conflict between the two courts, the act of 1885, p. 73, was passed. See King's Conflicting Cases, vol. 1, secs. 148, 159, 190 and 200.*

§ 543. *Wright v. Fawcett*, 42 T. 203.

In contested election cases, the jurisdiction of the district court is dependent on the statute and upon a compliance of the prerequisites prescribed thereby.

Qualified: *Roach v. Malotte*, 56 S. W. 702.

The jurisdiction is now conferred by the constitution. See article 5, section 8.

NOTE.—*Wright v. Fawcett, supra; Rogers v. Johns*, 42 T. 339, and *Lindsey v. Lockett*, 20 T. 516, were all decided prior to the adoption of the present provision of the constitution.

§ 544. *Womack v. Womack*, 8 T. 417.

Where a minor seeks to set aside a sale, he must tender the consideration received.

Limited: *Bullock v. Sprowls*, 93 T. 188 (54 S. W. 661).

See *Cummings v. Powell*, § 97, and note.

§ 545. Yancy v. Batte, 48 T. 46.

Creditors of the ancestor have a right to a *personal* judgment against the heirs to the extent that they have received assets from such ancestor.

Overruled: Blinn v. McDonald, 92 T. 604 (50 S. W. 931).

See *Mayes v. Jones*, § 329, and note.

§ 546. Yarbrough v. Weaver, 6 C. A. 215 (25 S. W. 468).

Where several special charges are presented to the court, and constitute different paragraphs on the same paper, the court may reject them all, if one of them is incorrect.

Contra: Burnham v. Logan, 88 T. 1 (26 S. W. 46).

See *S. & E. T. Ry. Co. v. Ewing*, § 410.

§ 547. Young v. Matier, 3 W. & W., sec. 354.

A homestead was sold partly for cash, the balance to be paid in lumber to be used in the erection of a new homestead, when a garnishment was run upon the same. *Held*, when a homestead is sold with the present and specific intent to reinvest the proceeds in another, such proceeds are not subject to garnishment while in process of such exchange or reinvestment.

Contra: Kirby v. Giddings, 75 T. 679 (13 S. W. 27).

See *Watkins v. Davis*, § 511.

TABLE OF CASES.

DECIDED BY COURTS OF CIVIL APPEALS, AND REVIEWED BY SUPREME COURT.

The following list embraces all cases decided in the several Courts of Civil Appeals from their organization in which a revision of their opinions by the Supreme Court has been sought either by application for writ of error, on certified questions, or certificate of dissent, down to the close of the last session of the Supreme Court in June, 1901, giving the action had in each case:

- Abbott v. International B. & L. Ass'n, 23 S. W. 629. Writ of error granted. Reversed and rendered 86 T. 467 (25 S. W. 620). See 20 S. W. 118.
- Abeel v. Tasker, 47 S. W. 738. Writ of error refused.
- Abernathy v. Bass, 9 C. A. 239 (29 S. W. 398). Writ of error refused.
- Abilene Comp. Co. v. Bell & Co. (memorandum opinion, unpublished). Writ of error refused.
- Acers v. Acers, 22 C. A. 584 (56 S. W. 196). Writ of error refused.
- Ackerman v. Ackerman, 22 C. A. 612 (55 S. W. 801). Writ of error refused.
- Adair v. Robinson, 6 C. A. 275 (25 S. W. 734). Writ of error refused.
- Adams v. Kauffman, 11 C. A. 179 (32 S. W. 712). Writ of error refused.
- Adams v. Bateman, 29 S. W. 1124. Writ of error refused. 88 T. 130 (30 S. W. 855).
- Adams v. Casey-Swasey Co., 15 C. A. 379 (39 S. W. 654). Writ of error refused.
- Adams v. Dignowity, 8 C. A. 201 (28 S. W. 373). Writ of error refused.
- Adams v. Ramsey, 19 C. A. 294 (46 S. W. 265). Writ of error refused.
- Adams v. Pardue, 36 S. W. 1015. Writ of error refused.

- Adams v. Mauermann*, 40 S. W. 22. Certified questions. 90 T. 438 (39 S. W. 280).
- Adams v. San Angelo Water Works Co.*, 25 S. W. —. Certified questions. 86 T. 485 (26 S. W. 1104; 25 S. W. 605).
- Adkins v. Harn*, 23 S. W. 28. Writ of error refused.
- Adoue v. Collins*, 36 S. W. 307. Writ of error refused.
- Adoue v. Gonzales*, 22 C. A. 73 (54 S. W. 367). Writ of error refused.
- Adoue v. Wettermark*, 55 S. W. 511. Application dismissed. See 58 S. W. 722.
- Aetna Life Ins. Co. v. Hicks*, 56 S. W. 87. Writ of error refused.
- Aetna Ins. Co. v. Holcombe*, 31 S. W. 1086. Writ of error granted. Reversed and remanded. 89 T. 404 (34 S. W. 915).
- Affleck v. Wangermann*, 54 S. W. 255. Writ of error granted. Reversed and remanded. 93 T. 351.
- Akes v. Sanford*, 39 S. W. 952. Writ of error refused.
- Akes v. Sanford*, 19 C. A. 601 (47 S. W. 671). Writ of error refused.
- Alamo Cement Co. v. City of San Antonio*, 23 S. W. 449. Writ of error refused.
- Alamo Fire Ins. Co. v. Brooks*, 32 S. W. 714. Writ of error refused.
- Alamo Fire Ins. Co. v. Lancaster*, 7 C. A. 677 (28 S. W. 126). Writ of error refused.
- Alamo Fire Ins. Co. v. Shacklett*, 26 S. W. 630. Application dismissed.
- Alcott v. Spencer Optical Mfg. Co.*, 31 S. W. 833. Writ of error refused.
- Alderson v. G. C. & S. F. Ry. Co.*, 23 S. W. 617. Writ of error refused.
- Aldridge v. Webb*, 46 S. W. 224. Writ of error refused.
- Alexander v. Banner*, 10 C. A. 111 (30 S. W. 563). Writ of error refused.
- Alexander v. Houghton*, 26 S. W. 1102. Certified questions. Writ of error refused. 86 T. 702 (26 S. W. 937).
- Alexander v. Robertson*, 24 S. W. 680. Writ of error granted. Reversed and remanded. 86 T. 511 (26 S. W. 41).
- Alexander v. Traufant Com. Co.*, 34 S. W. 182. Writ of error refused.

- Allemania Fire Ins. Co. v. Fred, 11 C. A. 311 (32 S. W. 243).
Application dismissed.
- Allen v. Boggess, 56 S. W. 195. Writ of error granted. Affirmed. 1 T. C. R. 4 (58 S. W. 833).
- Allen v. Courtney, 58 S. W. 200. Writ of error refused.
- Allen v. Exchange Nat'l Bank, 21 C. A. 450 (52 S. W. 575).
Writ of error refused.
- Allen v. Garrison (see Mansfield v. Garrison).
- Allen v. G. H. & S. A. Ry. Co., 14 C. A. 344 (37 S. W. 171).
Writ of error refused.
- Allen v. Hall, 1 T. C. R. 494. Dismissed. 60 S. W. 586.
- Allen v. Parker County, 57 S. W. 703. Writ of error refused.
- Allen v. Royal Ins. Co., 49 S. W. 931. Writ of error refused.
- Allen v. Stovall, 1 T. C. R. 345. Application granted. 62 S. W. 87. Reversed. 63 S. W. 863.
- Allen v. Tyson-Jones Buggy Co., 40 S. W. 740. Certified questions. Decision for plaintiff. 91 T. 22 (40 S. W. 393). Rehearing denied. 91 T. 26 (40 S. W. 714).
- Allin v. Gulf C. & S. F. Ry. Co., 1 T. C. R. 369. Application refused. 62 S. W. 1079.
- Alliance Milling Co. v. Eaton, 23 S. W. 455. Writ of error granted. 33 S. W. 588. Ten days given to amend. Application for writ of error. 24 S. W. 392. Reversed and remanded. 86 T. 401 (25 S. W. 614). Writ of error refused.
- Alliance Milling Co. v. Eaton, 33 S. W. 588. Writ of error refused.
- Allison v. Pitkin, 33 S. W. 293. Writ of error refused.
- Altgelt v. City of San Antonio, 55 S. W. 761. Writ of error refused.
- Alvord v. Waggoner, 29 S. W. 797. Writ of error granted. Reversed and rendered. Eustis v. Fosdick, 88 T. 615. Modified. 32 S. W. 872.
- Alvarado W. S. & L. Co. v. Adoue, 47 S. W. 281. Writ of error refused.
- American Cent. Ins. Co. v. Bass, 90 T. 380 (38 S. W. 1119).
- American Cent. Ins. Co. v. Cowan, 34 S. W. 460. Writ of error refused.
- American Cent. Ins. Co. v. Green, 16 C. A. 531 (41 S. W. 74). Writ of error refused.
- American Cent. Ins. Co. v. Murphy, 1 T. C. R. 297. Application refused. 61 S. W. 956.

- American Fr. Ld. Mtg. Co. v. Pace, 56 S. W. 377. Writ of error refused.
- American F. Ld. Mtg. Co. v. McDonnell, 54 S. W. 259. Writ of error granted. Reversed and rendered. 93 T. 398.
- American Legion of Honor v. Geisberg, 17 C. A. 2 (42 S. W. 785). Writ of error refused.
- American Mutual B. & L. Ass'n v. Harn, 1 T. C. R. 327. Application granted. 62 S. W. 74.
- American Natl. Bank of Austin v. Cruger, 44 S. W. 1057. Certified questions. 91 T. 446 (44 S. W. 278).
- American Natl. Bank of Dallas v. Dallas Mfg. Co., 15 C. A. 631 (39 S. W. 955). Writ of error refused.
- American Surety Co. v. Lucas, 57 S. W. 969. Writ of error refused.
- American Well Works v. De Aguay, 53 S. W. 350. Writ of error refused.
- Ames Iron Works v. Chinn, 20 C. A. 382 (49 S. W. 665). Application dismissed.
- Amory Mfg. Co. v. G. C. & S. F. Ry. Co., (no written opinion). Writ of error granted. Reversed and rendered. 89 T. 419 (37 S. W. 856).
- Anderson Elec. Co. v. Cleburne W. I. & L. Co., 57 S. W. 575. Writ of error refused.
- Anderson v. Cochran, 93 T. 583 (57 S. W. 29). Certified questions.
- Anderson & Co. v. Harden, (memorandum opinion, unpublished). Writ of error refused.
- Anderson v. Neighbors, (written opinion). 1. T. C. R. 213-882. Application refused. 59 S. W. 543; 61 S. W. 145; 62 S. W. 417.
- Anderson v. Nuckles, 34 S. W. 184, 680. Writ of error refused.
- Anderson v. Sessions, 51 S. W. 874. On certificate of dissent. Affirmed. 93 T. 279.
- Anderson v. Silliman, 50 S. W. 576. Certified questions. 51 S. W. (C. A.) 1134.
- Anderson v. Waco State Bank, 92 T. 506 (49 S. W. 1030). Certified questions.
- Anderson v. Walker, 49 S. W. 937. Writ of error granted. Affirmed in part and reversed and remanded in part. 93 T. 119.
- Anderson v. Waco State Bank, 28 S. W. 344. Writ of error refused. 86 T. 618.

- Andrews v. Bonham**, 19 C. A. 179 (46 S. W. 902). Writ of error refused.
- Andrews v. Union C. L. I. Co.**, 44 S. W. 610. Writ of error granted. Reversed and remanded. 92 T. 584.
- Andrews v. Union Central Life Ins. Co.**, 1 T. C. R. 51. Application refused. 58 S. W. 1039.
- Angel v. Miller**, 16 C. A. 679 (39 S. W. 1092). Writ of error refused. 90 T. 505 (39 S. W. 916).
- Anheuser-Busch Brew. Ass'n v. Houck**, 27 S. W. 692. Writ of error granted. Affirmed. 88 T. 184. 30 S. W. 869.
- Aransas Pass Harbor Co. v. Manning**, 63 S. W. 627. Certified questions.
- Armengol v. Lemp**, 25 S. W. 137. Writ of error granted. Reversed and judgment of District Court affirmed. 86 T. 690. 26 S. W. 941.
- Armstrong v. Ames & Frost Co.**, 17 C. A. 46 (43 S. W. 302). Writ of error refused.
- Armstrong v. Elliott**, 20 C. A. 41 (49 S. W. 635). Application dismissed.
- Armstrong v. Dreaper**, 50 S. W. 1024. Writ of error refused.
- Armstrong v. Traylor**, 30 S. W. 841. Certified questions. 87 T. 598 (30 S. W. 440).
- Arnold v. Attaway**, 35 S. W. 482. Writ of error refused. 89 T. 506 (35 S. W. 646).
- Arnold v. Chamberlain**, 14 C. A. 634 (39 S. W. 201). Writ of error refused. See 33 S. W. 767.
- Arnold v. Hodge**, 20 C. A. 211 (49 S. W. 714). Writ of error refused.
- Arnold v. McDonald**, 22 C. A. 487 (55 S. W. 529). Writ of error refused.
- Arnold v. Swenson**, 44 S. W. 870. Writ of error refused.
- Ashcraft v. Stephens**, 16 C. A. 341 (40 S. W. 1036). Application dismissed.
- Atteridge v. Maxey**, 18 C. A. 550 (45 S. W. 606). Application dismissed.
- Atchison, T. & S. F. Ry. Co. v. Click**, 32 S. W. 226. Writ of error refused. (See 23 S. W. 833).
- Atchison, T. & S. F. Ry. Co. v. Grant**, 6 C. A. 674 (26 S. W. 286). Writ of error refused.
- Atchison, T. & S. F. Ry. Co. v. Locklin**, 29 S. W. 690. Certified questions. 87 T. 467 (29 S. W. 469).

- Atchison, T. & S. F. Ry. Co. v. Mendoza (written opinion).
1 T. C. R. 439. Dismissed. 60 S. W. 327.
- Atchison, T. & S. F. Ry. Co. v. Reilly, 30 S. W. 491. Writ
of error refused.
- Atkinson v. Phares, 20 C. A. 150 (49 S. W. 653). Writ of
error refused.
- Aultman, C. & Co. v. Allen, 12 C. A. 227 (33 S. W. 679).
Writ of error refused.
- Aultman-Miller Co. v. Carr, 42 S. W. 614. Writ of error re-
fused.
- Austin v. Bennick, affirmed February 7, 1894. No published
opinion. Writ of error refused.
- Austin R. E. & A. Ass'n v. Bahn, 27 S. W. 1047. Action
suspended. 29 S. W. 646. Writ of error refused. 87
T. 582. Rehearing denied. 87 T. 583 (30 S. W. 430).
- Austin R. T. Ry. Co. v. Cullen, 29 S. W. 256; 30 Id. 578.
Writ of error refused. 30 S. W. 578.
- Austin R. T. Ry. Co. v. Groethe, 31 S. W. 196. Writ of er-
ror granted. Affirmed. 88 T. 263.
- Aycock v. Texas Trans. Co., 21 C. A. 153 (50 S. W. 1061).
Writ of error refused.
- Ayers v. Lancaster, affirmed April 18, 1894. Opinion unpub-
lished. Application dismissed.
- Ayers v. Parrish & Potter, 15 C. A. 54 (40 S. W. 435). Writ
of error refused.
- Avery v. Popper & Bro., 45 S. W. 951. Writ of error granted.
Reformed and rendered. 92 T. 337.
- Avery & Sons v. Waples, 19 C. A. 672 (49 S. W. 151). Writ
of error refused.
- Babbige v. Gurley (see Hanrick v. Gurley).
- Bacon v. State, 2 C. A. 692 (21 S. W. 149). Writ of error
refused.
- Bagley v. Smith County, 33 S. W. 908. Writ of error granted.
Reversed and remanded. 89 T. 556.
- Bahn v. Starcke, 34 S. W. 651. Certified questions. 89 T.
203 (34 S. W. 103).
- Bailey v. Boydston, 33 S. W. 281. Writ of error refused.
- Bailey v. Mickle, 45 S. W. 949. Writ of error refused.
- Baines v. Jemison, 27 S. W. 182. Certified questions. Af-
firmed, 86 T. 118 (23 S. W. 639).

- Baldwin v. Goldfrank**, 26 S. W. 155. Writ of error granted. Affirmed, 88 T. 249 (31 S. W. 1064).
- Baldwin v. Roberts**, 13 C. A. 563 (36 S. W. 789). Writ of error refused.
- Baldwin v. Root**, 38 S. W. 630. Writ of error granted. Reversed and remanded. 90 T. 546 (40 S. W. 3).
- Ball v. Hagy**, 54 S. W. 915. Application dismissed.
- Ball, Hutchings & Co. v. Presidio Co.**, 27 S. W. 702. Writ of error granted. Reversed and judgment of District Court affirmed. 88 T. 60 (29 S. W. 1042).
- Ballaster v. Mann**, 24 S. W. 561. Writ of error granted. Affirmed. 86 T. 643 (26 S. W. 595).
- Bammel v. Kirby**, 47 S. W. 392. Application dismissed.
- Bank of California v. Marshall**, 1 C. A. 704 (23 S. W. 246). Writ of error refused. 22 S. W. 6.
- Banks v. House**, 50 S. W. 1022. Writ of error granted. Affirmed, 93 T. 58.
- Barber v. Geer**, 63 S. W. 1007. Certified questions. 63 S. W. (C. A.) 934.
- Barber v. S. & E. T. Ry. Co.**, 9 C. A. 93 (28 S. W. 270). Writ of error refused.
- Barker v. Merchants Natl. Bank**, 40 S. W. 171. Writ of error refused. 87 T. 435.
- Barnard v. Doty**. (No published opinion.) Writ of error granted. Reversed and judgment of District Court affirmed. Doty v. Barnard, 92 T. 104.
- Barnes v. Krause**, 53 S. W. 92. Writ of error refused.
- Barnes & Manue, v. Darby & Cauthen** 18 C. A. 468 (44 S. W. 1029). Writ of error refused.
- Barnes v. Lightfoot**, 1 T. C. R. 421. Dismissed. 62 S. W. 564.
- Barnett v. Houston**, 18 C. A. 134 (44 S. W. 689). Writ of error refused.
- Barnett v. Squires**, 52 S. W. 612. Writ of error granted. Reversed and rendered. 93 T. 193.
- Barnett v. Templeman**, 31 S. W. 78. Application dismissed.
- Barrett v. Bonham Oil & Cotton Co.**, 57 S. W. 602. Writ of error refused.
- Barrett v. Coleman**, 12 C. A. 663 (35 S. W. 418). Writ of error refused.
- Barrett v. Featherstone**, 35 S. W. 11. On certificate of dissent. Affirmed. 89 T. 567 (36 S. W. 245).

- Barrett v. Metcalf**, 12 C. A. 247 (33 S. W. 758). Writ of error refused.
- Barrow v. Gridley**, 1 T. C. R. 209. Application refused. 59 S. W. 602-913.
- Bassett v. City of El Paso**, 28 S. W. 554. Writ of error granted. Affirmed. 88 T. 168 (30 S. W. 893).
- Bassett v. Mills**, 30 S. W. 558. Reversed and remanded, 89 T. 162 (34 S. W. 93).
- Bassett v. Sherrod**, 13 C. A. 327 (35 S. W. 312). Certified questions. Application dismissed. 89 T. 272 (34 S. W. 600). Writ of error refused. 90 T. 32 (36 S. W. 400).
- Bateman v. Maddox**, 26 S. W. —. Certified questions. 86 T. 546 (26 S. W. 51).
- Batts v. Moore**, 54 S. W. 1036. Writ of error refused.
- Batcheller v. Besancon**, 19 C. A. 137 (47 S. W. 296). Writ of error refused.
- Batsell v. St. L., A. & T. Ry. Co.**, 4 C. A. 580 (23 S. W. 552). Application for writ of error dismissed. 86 T. 192 (24 S. W. 504).
- Baum v. Williams**, 16 C. A. 407 (41 S. W. 840). Writ of error refused.
- Baumann v. Chambers**, 42 S. W. 564. Certified questions. See 28 S. W. 917. 91 T. 108 (41 S. W. 471).
- Bauman v. Jaffray**, 6 C. A. 489 (26 S. W. 260). Writ of error refused. 86 T. 617.
- Bayne v. Denny**, 21 C. A. 435 (52 S. W. 983). Writ of error refused.
- Bean v. City of Brownwood**, 43 S. W. 1036; 44 Id. 873. Writ of error granted. Reversed and remanded. 91 T. 684 (45 S. W. 897).
- Bean v. Warden**, 31 S. W. 831. Writ of error refused.
- Beaumont Pasture Co. v. S. & E. T. Ry. Co.**, 41 S. W. 190, 543. Writ of error refused.
- Beckham v. Medlock**, 19 C. A. 61 (46 S. W. 402). Writ of error refused.
- Bedford v. Rayner Cattle Co.**, 35 S. W. 931 (see 44 S. W. 410). Writ of error refused. 91 T. 642 (45 S. W. 554).
- Beer v. Landman**, 30 S. W. 64, 726. Writ of error granted. Reversed and remanded. 88 T. 450 (31 S. W. 805).
- Beer v. Thomas**, 13 C. A. 30 (34 S. W. 1010). Writ of error refused.

- Behrens Drug Co. v. Hamilton & McCarty**, 45 S. W. 622.
Writ of error granted. Affirmed. 92 T. 284 (48 S. W. 5).
- Beitel v. Dobbin**, 44 S. W. 299. Writ of error refused.
- Beitel v. Wagner**, 11 C. A. 365 (32 S. W. 366). Writ of error refused.
- Belcher v. Cassidy Bros.**, 1 T. C. R. 710. Application refused. 62 S. W. 924.
- Belcher v. M., K. & T. Ry. Co.**, 47 S. W. 384, 1020. Writ of error granted. Reversed and remanded. 92 T. 593 (50 S. W. 559).
- Belknap & Co. v. Groover**, 56 S. W. 249. Writ of error refused.
- Belo & Co. v. Smith**, 40 S. W. 856. Writ of error granted. Affirmed. 91 T. 221 (42 S. W. 850).
- Bell v. Stewart**, 44 S. W. 925; 50 Id. 155. Application dismissed.
- Bell v. Williams**, 56 S. W. 274. Writ of error refused.
- Bell v. Wright** (written opinion). 1 T. C. R. 97. Dismissed. 63 S. W. 159; 60 S. W. 873.
- Belt v. G. C. & S. F. Ry. Co.**, 4 C. A. 231 (22 S. W. 1062). Writ of error refused.
- Bemis v. Goolsby** (see *Natl. Bank of Jefferson v. Goolsby*).
- Benavides v. Molino** (written opinion). 1 T. C. R. 357. Dismissed. 61 S. W. 260-875.
- Bender v. Peyton**, 4 C. A. 57 (23 S. W. 222). Writ of error refused.
- Bennett v. Latham**, 18 C. A. 403 (45 S. W. 934). Writ of error refused.
- Benson v. Cahill**, 37 S. W. 1088. Writ of error refused.
- Benson v. City of Galveston**, 18 C. A. 20 (44 S. W. 613). Writ of error refused.
- Benson v. Phipps**, 28 S. W. 359. Writ of error granted. Reversed and remanded. 87 T. 578 (29 S. W. 106).
- Bente v. Lang**, 9 C. A. 328 (29 S. W. 813). Writ of error refused.
- Berg v. S. A. St. Ry. Co.**, 49 S. W. 921. Writ of error refused.
- Berlin Iron Bridge Co. v. City of San Antonio**, 92 T. 388 (49 S. W. 211). Certified questions.
- Berrendo Stock Co. v. McCarty**, 20 S. W. 933. Writ of

- error granted. Reversed and rendered. 85 T. 412 (21 S. W. 598).
- Berry v. City of San Antonio, 46 S. W. 273. Writ of error granted. Reformed and rendered. 92 T. 319.
- Berry v. McAdams, 93 T. 431 (55 S. W. 1112). Certified questions. C. A. 193 (56 S. W.).
- Berwind v. Galveston & H. Ins. Co., 20 C. A. 426 (50 S. W. 413). Writ of error refused.
- Beville v. Boyd, 16 C. A. 491 (41 S. W. 670; 42 Id. 318). Writ of error granted. Reversed and judgment of District Court affirmed. 91 T. 439 (44 S. W. 287).
- Beville v. Rush, 25 S. W. 1022. Writ of error refused.
- Bexar Bldg. & L. Ass'n v. Heady, 21 C. A. 154 (50 S. W. 1079). Writ of error refused.
- Bexar Bldg. & L. Ass'n v. Newman, 25 S. W. 461. Certified questions. 86 T. 380 (25 S. W. 11).
- Bexar Bldg. & L. Ass'n v. Seebe, 40 S. W. 875. Writ of error refused.
- Bexar County v. Herff, 23 S. W. 409. Application dismissed.
- Bicocchi v. Casey-Swasey Co., 40 S. W. 209. Writ of error granted. Reversed and rendered. 91 T. 259 (42 S. W. 963).
- Birdseye v. Rogers, 52 S. W. 985. Application dismissed.
- Birdseye v. Shaeffer, 57 S. W. 987. Application dismissed.
- Blackburn v. Blackburn, 16 C. A. 564 (42 S. W. 132). Application dismissed.
- Blackman v. Harry, 45 S. W. 610. Writ of error refused.
- Blackman v. Houssels, 35 S. W. 511. Writ of error refused.
- Blackwell v. Blackwell, 23 S. W. 31. Writ of error granted. reversed and remanded. 86 T. 207 (24 S. W. 389).
- Blackwell v. Coleman, 59 S. W. 530. Certified questions. 60 S. W. (C. A.) 572.
- Blackwood v. Blackwood, 47 S. W. 483. On certificate of dissent. Majority opinion sustained. 92 T. 478 (49 S. W. 1045).
- Blagge v. Moore, 6 C. A. 359 (23 S. W. 466). 26 S. W. 304; 34 S. W. 311. Reversed and rendered, 38 S. W. 979. Rehearing refused. 41 S. W. 465.
- Blakely v. El Paso Bldg. & L. Ass'n, 26 S. W. 292. Writ of error refused.
- Blair v. Blanton, 54 S. W. 321. Writ of error granted and afterwards dismissed. 93 T. 348.

- Bland v. Orr, 39 S. W. 558. (Memorandum of opinion, unpublished, adopting that of Supreme Court on certified questions). 90 T. 492. Writ of error refused.
- Bland v. State, 38 S. W. 252. See 36 S. W. 914. Writ of error refused.
- Blethen v. Bonner, 52 S. W. 571. Writ of error granted. Reversed and remanded. 93 T. 141.
- Blinn v. McDonald, 38 S. W. 384. Writ of error granted. Reversed and remanded. 92 T. 604 (46 S. W. 787).
- Blount v. Lewis, 1 T. C. R. 704. Dismissed. 59 S. W. 293.
- Blum v. Brown, 11 C. A. 463 (33 S. W. 145). Writ of error refused.
- Blum v. Fristoe, 42 S. W. 656. Writ of error granted. Reversed and judgment of District Court affirmed. 92 T. 76 (45 S. W. 998).
- Blum v. H. & T. C. Ry. Co., 10 C. A. 312 (31 S. W. 526). Writ of error refused.
- Blum v. Jones, 23 S. W. 844. Writ of error granted. Reversed and remanded. 86 T. 492 (25 S. W. 694).
- Blum Land Co. v. Rogers, 11 C. A. 184 (32 S. W. 713). Writ of error refused.
- Blume v. Rice, 12 C. A. 1 (32 S. W. 1056). Writ of error refused.
- Board of School Trustees v. City of Sherman, 42 S. W. 546. Writ of error refused. 90 T. 188.
- Boaz v. State, 7 C. A. 35 (26 S. W. 869). Writ of error refused. See 87 T. 246 (28 S. W. 272).
- Boehm v. Beutler, 16 C. A. 380 (41 S. W. 658). Writ of error refused.
- Boerner v. Traders Nat. Bank, 39 S. W. 285. Certified questions. 90 T. 443.
- Bogges v. Harris, 39 S. W. 565. (No written opinion below.) Writ of error granted. Reversed and remanded to court of civil appeals. 90 T. 476.
- Bolin v. St. L., S. W. Ry. Co., 1 T. C. R. 54. Application refused. 61 S. W. 444.
- Bollman v. Supreme Lodge K. of H., 53 S. W. 722. Writ of error refused.
- Bomar v. Powers, 50 S. W. 142. Writ of error refused.
- Bomar v. West, (No published opinion in court of civil appeals). Writ of error granted. Reversed and remanded. 87 T. 299 (28 S. W. 519).

- Bond v. Natl. Exchange Bank of Dallas, 53 S. W. 71. Writ of error refused.
- Bond v. T. & P. Ry. Co., 15 C. A. 281 (39 S. W. 978). Writ of error refused.
- Bonham Cotton Press Co. v. McKellar, 26 S. W. 1056. Writ of error granted. Reversed and remanded. 86 T. 694 (26 S. W. 1056).
- Bonnell v. Prince, 11 C. A. 399 (32 S. W. 855). Writ of error refused, with leave to amend. 89 T. 104 (33 S. W. 852).
- Bonnet v. First Natl. Bank, 1 T. C. R. 422. Dismissed. 60 S. W. 325.
- Bonner v. Freedman, 47 S. W. 1119. Application dismissed.
- Bonner v. McCreary, 35 S. W. 197. Writ of error refused.
- Bonnett v. G., H. & S. A. Ry. Co., 31 S. W. 525. Writ of error granted. Reversed and remanded, 89 T. 72 (33 S. W. 334).
- Bopp v. Hansford, 18 C. A. 340 (45 S. W. 744). Writ of error refused.
- Borchers v. Mead, 17 C. A. 32 (43 S. W. 300). Writ of error refused.
- Bordages v. Higin, 20 S. W. 726; 28 S. W. 350. (See 19 S. W. 446.) Judgment set aside, 20 S. W. 184. Reversed and rendered. 88 T. 458 (31 S. W. 52). Rehearing refused. 88 T. 465 (31 S. W. 803).
- Bosley v. Pease, 22 S. W. 516. Writ of error granted. Affirmed. 86 T. 292 (24 S. W. 279).
- Bosse v. Cadwallader, 23 S. W. 260 (see Ogden v. Cadwallader). Rehearing refused (730). Reversed, 86 T. 336 (24 S. W. 798).
- Bouldin v. Miller, 26 S. W. 133. Writ of error granted. Affirmed. 87 T. 359 (28 S. W. 940).
- Bowen v. Kirkland, 17 C. A. 346 (44 S. W. 189). Writ of error refused.
- Bowen v. Lansing Wagon Works, 43 S. W. 872. Certified questions. 91 T. 385.
- Bowen v. Pryor, 44 S. W. 1133. Writ of error refused.
- Bowman v. Texas Brewing Co., 17 C. A. 446 (43 S. W. 808). Application dismissed.
- Bowling v. Blum, 52 S. W. 97. Writ of error refused.
- Boyd v. Ghent, 93 T. 543 (57 S. W. 25). Certified questions.

- Boyd v. Kimball, 21 C. A. 6 (50 S. W. 634). Writ of error refused.
- Boyd v. Miller, 22 C. A. 165 (54 S. W. 411). Writ of error refused.
- Boyd v. Moss, 15 C. A. 222 (39 S. W. 983). Writ of error refused.
- Boydston v. Rockwall Co., 23 S. W. 541. Certified questions. 86 T. 234 (24 S. W. 272).
- Brackenridge v. Cobb, 2 C. A. 161 (21 S. W. 614). Writ of error refused. 85 T. 448 (21 S. W. 1034).
- Brackenridge v. Clairidge, 42 S. W. 1005. Writ of error granted. Reversed and remanded, 91 T. 527 (44 S. W. 819).
- Bradford v. Knowles, 24 S. W. 1095. Writ of error granted. Reversed and remanded. 86 T. 505 (25 S. W. 1117).
- Bradford v. Knowles, 11 C. A. 572 (33 S. W. 149). Writ of error refused.
- Bradshaw v. Roberts, 52 S. W. 574. Writ of error refused.
- Brady v. Georgia Home Ins. Co., 1 T. C. R. 248. Application refused. 59 S. W. 914.
- Bragassa v. Peoples Bldg. & L. Ass'n, 51 S. W. 1134. (Memorandum of opinion, unpublished.) Writ of error refused.
- Branch v. I. & G. N. Ry. Co., 48 S. W. 891. Application dismissed.
- Branch v. I. & G. N. Ry. Co., 92 T. 288 (47 S. W. 974). Certified questions. 40 S. W. 208.
- Branch v. Traylor, 36 S. W. 592. Writ of error refused.
- Branch v. Simons, 48 S. W. 40. Application dismissed.
- Brannin v. Wear-B. D. G. Co., 30 S. W. 572. Writ of error refused.
- Bratton v. Adams, 7 C. A. 161 (26 S. W. 1108). Writ of error refused.
- Brazoria County v. Grand Rapids Sch. Fur. Co., 43 S. W. 900. Application dismissed.
- Breath v. City of Galveston, 46 S. W. 903. Writ of error granted. Reversed and remanded. 92 T. 454.
- Breneman v. Beaumont Lumber Co., 12 C. A. 517 (34 S. W. 198). Writ of error refused.
- Breneman v. Mayer, 58 S. W. 725. Writ of error refused.
- Breneman v. West, 21 C. A. 19 (50 S. W. 471). Writ of error refused.

- Brewster County v. Presidio County, 19 C. A. 638 (48 S. W. 213). Writ of error refused.
- Bridgeport & Decatur Min. Co. v. Wise County Coal Co., 39 S. W. 965. Writ of error refused.
- Bridges v. Johnson (see Johnson v. Bridges).
- Brightman v. Comanche Co., 62 S. E. 973. Reversed. 63 S. W. 858.
- Brightman v. Fry, 17 C. A. 531 (43 S. W. 60). Writ of error refused.
- Bringinghurst v. Mut. Bldg. & L. Ass'n, 19 C. A. 355 (47 S. W. 831). Writ of error refused.
- Brinkley v. Smith, 12 C. A. 641 (35 S. W. 48). Writ of error refused.
- British-Am. Assur. Co. v. Miller, 44 S. W. 60. Certified questions. 91 T. 414.
- Britt v. Burghart, 16 C. A. 78 (41 S. W. 389). Writ of error refused.
- Broadway v. San Antonio Gas. Co., 1 T. C. R. 352. Application dismissed. 60 S. W. 270.
- Brooks v. State, 56 S. W. 924. Writ of error refused.
- Brooks v. Powell, 29 S. W. 809. Writ of error refused.
- Brown v. Bryant, 17 C. A. 454 (44 S. W. 399). Writ of error refused.
- Brown v. City of Houston, 48 S. W. 760. Writ of error refused.
- Brown v. Caulfield, 30 S. W. 454. Writ of error refused.
- Brown v. Elmendorf, 25 S. W. 145. Writ of error granted. Affirmed. 87 T. 57 (26 S. W. 1043).
- Brown v. Farmers & M. Natl. Bank, 31 S. W. 216. Writ of error granted. Reversed and rendered. 88 T. 265 (31 S. W. 285).
- Brown v. Galveston Wharf Co., 48 S. W. 41. Writ of error Granted. Reversed and rendered. 92 T. 521.
- Brown v. Hudson, 14 C. A. 605 (38 S. W. 653). Writ of error refused.
- Brown v. Leath, 17 C. A. 262 (42 S. W. 655; 44 Id. 42). Writ of error refused.
- Brown v. Masterson, 38 S. W. 1027. Writ of error refused.
- Brown v. Mitchell, 29 S. W. 927. Certified questions. 87 T. 140 (26 S. W. 1059). Reversed and remanded. 88 T. 350 (31 S. W. 621).
- Brown v. Montgomery, 31 S. W. 1079. Writ of error granted. Reversed and remanded. 89 T. 250 (34 S. W. 443).

- Brown v. Perez**, 32 S. W. 546 (see 25 S. W. 980; 14 S. W. 1055). Writ of error granted. Affirmed. 89 T. 282 (34 S. W. 725).
- Brown v. Rowland**, 33 S. W. 273. Writ of error granted. Reversed and remanded. 92 T. 54 (45 S. W. 795).
- Brown v. Reed**, 20 C. A. 74 (48 S. W. 537). Writ of error refused.
- Brown v. S. W. Tel. & T. Co.**, 17 C. A. 433 (44 S. W. 59). Writ of error refused.
- Brown v. Tom**, 26 S. W. 299. Writ of error refused.
- Brown v. Viscaya**, 54 S. W. 636. Writ of error refused.
- Bruce v. Koch**, 40 S. W. 626. Application dismissed.
- Bruce v. Koch**, 58 S. W. 189. Reversed. 59 S. W. 540.
- Bruce v. Natl. Bank**, 1 T. C. R. 735. Application dismissed. 60 S. W. 1006.
- Brush v. Clarendon L. I. & A. Co.**, 2 C. A. 188 (21 S. W. 389). Writ of error refused.
- Brush E. L. & P. Co. v. Lefevre**, 55 S. W. 396. Writ of error granted. Reversed and remanded. 93 T. 604.
- Bryan v. Allen**, 39 S. W. 963. Writ of error refused.
- Bryan v. Pierson** (no published opinion). Application dismissed.
- Buchanan v. Edwards**, 51 S. W. 33. Writ of error refused.
- Buckler v. Tuberville**, 17 C. A. 120 (43 S. W. 810). Application dismissed.
- Buckley v. First Natl. Bank of L. C.** See *Byrne v. Same*.
- Bugbee-Coleman L. & C. Co. v. Matador L. & C. Co.**, 1 T. C. R. 680. Application refused. 63 S. W. 914.
- Buie v. Chicago, R. I. & P. Ry. Co.**, 63 S. W. 627. Certified question.
- Bldg. & L. Ass'n of Dakota v. Cunningham**. (No published opinion). Writ of error granted. Reversed and rendered. 92 T. 155.
- Bldg. & L. Ass'n of Dakota v. Griffin**. (No published opinion). Writ of error granted. Reversed and remanded. 90 T. 480 (39 S. W. 656).
- Bldg. & L. Ass'n of Dakota v. Guillemet**, 15 C. A. 649 (40 S. W. 225). Writ of error refused.
- Bldg. & L. Ass'n of Dakota v. Logan**, 33 S. W. 1088. Writ of error refused.
- Bldg. & L. Ass'n of Dakota v. Price**, 18 C. A. 370 (46 S. W. 92). Writ of error refused.

- Bull v. Jones, 29 S. W. 804. Reversed and remanded. 90 T. 187 (37 S. W. 1054).
- Bullock v. Sprowls, 54 S. W. 657. Writ of error granted. Affirmed. 93 T. 188.
- Burkitt v. Key, 42 S. W. 231. Writ of error refused.
- Burkitt v. Twyman, 35 S. W. 421. Writ of error refused.
- Burleson v. Collins, 28 S. W. 898; 29 Id. 688. Writ of error refused.
- Burnett v. Casteel, 36 S. W. 782. Writ of error refused.
- Burnett v. Edling, 48 S. W. 775. Writ of error refused.
- Burnett v. Latham (see Bennett v. Latham), 18 C. A. 403 (45 S. W. 934). Writ of error refused.
- Burnett v. Oechsner, 92 T. 588 (50 S. W. 562). Certified questions.
- Burnett v. Powell, 6 C. A. 39 (25 S. W. 1030). Application dismissed. 86 T. 382.
- Burnham H. M. & Co. v. Logan, E. & S., 30 S. W. 97. Writ of error granted. Reversed and remanded 88 T. 1 (29 S. W. 1067).
- Burnham v. McMichael, 6 C. A. 496 (26 S. W. 887). Writ of error refused.
- Burns v. Falls, 56 S. W. 576. Writ of error refused.
- Burroughs v. Farmer (error for Burroughs v. Johnston, q. v.).
- Burroughs v. Johnston, 45 S. W. 846. Application dismissed.
- Burton v. Laing, 36 S. W. 298. Writ of error refused.
- Buse v. Bartlett, 1 C. A. 335 (21 S. W. 52). Writ of error refused.
- Busk v. Lowrie, 22 S. W. 414. Writ of error granted. Reversed and remanded. 86 T. 128 (23 S. W. 983).
- Bute v. Brainerd, 93 T. 137 (53 S. W. 1017). Certified questions. 44 S. W. (C. A.) 575.
- Butterworth v. City of Henrietta, 1 T. C. R. 301. Application refused. 61 S. W. 979.
- Byers v. Brannon, 30 S. W. 492. Writ of error refused.
- Byers v. Carll, 7 C. A. 423 (27 S. W. 190). Writ of error refused.
- Byers v. Wallace, 25 S. W. 1043. Writ of error granted. Reversed and remanded. 87 T. 503 (28 S. W. 1056). Rehearing denied. 87 T. 513 (29 S. W. 760).
- Bynum v. Govan, 9 C. A. 559 (29 S. W. 1119). Application dismissed.

- Byrne v. First Natl. Bank of L. C., 20 C. A. 194 (49 S. W. 706). Writ of error refused.
- Byrne v. Lynn, 18 C. A. 252 (44 S. W. 311, 544). Writ of error refused.
- Cabaness v. Holland, 19 C. A. 383 (47 S. W. 379). Writ of error refused.
- Cabell v. Arnold, 22 S. W. 62. Writ of error granted. Reversed and remanded 86 T. 102 (23 S. W. 645).
- Cabell v. Greenwood (not yet published). Writ of error refused May 31, 1900.
- Cabell v. Holloway, 10 C. A. 307 (31 S. W. 201). Writ of error refused.
- Cabell v. Johnson, 13 C. A. 472 (35 S. W. 946). Writ of error refused.
- Cable v. Jackson, 42 S. W. 136. Writ of error refused.
- Cage v. Shapard (Shapard v. Cage, 19 C. A. 206), 46 S. W. 839. Writ of error refused.
- Cahill v. Benson, 19 C. A. 30 (46 S. W. 888). Writ of error refused.
- Cahill v. Texas Mex. Ry. Co., 40 S. W. 871. Application dismissed.
- Cain v. Texas Bldg. & L. Ass'n, 21 C. A. 61 (51 S. W. 879). Writ of error refused.
- Cairns v. Smith & Potter, Exrs., 49 S. W. 728. Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 667.
- Calder v. Davidson, 1. T. C. R. 201. Application refused. 59 S. W. 300.
- Caledonia Ins. Co. v. Wenar, 34 S. W. 385. Application dismissed.
- Callahan County v. Dowlen, 40 S. W. (See Dowlen v. Callahan County.)
- Calhoun v. Stark, 13 C. A. 60 (35 S. W. 410). Writ of error refused.
- Cameron v. First Natl. Bank of Decatur, 4 C. A. 309 (see 23 S. W. 334; 34 S. W. 178). Writ of error refused.
- Cameron & Co. v. Gebhard, 21 S. W. 786. Writ of error granted. 22 S. W. 1033. Affirmed. 85 T. 610.
- Cameron v. Hinton, 48 S. W. 24, 616. Certificate of dissent. 92 T. 492.
- Cameron v. Hinton. See 92 T. 492 (48 S. W. 616). Writ of error refused.

- Cameron v. State**, 7 C. A. 35 (26 S. W. 869). Writ of error refused. 87 T. 246 (28 S. W. 272).
- Campbell v. Antis**, 21 C. A. 161. Writ of error refused.
- Campbell v. Cook**, 24 S. W. 977; 33 S. W. 888; 41 S. W. 665. Writ of error granted. Reversed and remanded. 86 T. 630 (26 S. W. 486). Writ of error refused.
- Campbell v. Fisher**, 24 S. W. 661. Writ of error refused.
- Campbell v. Goodwin**, 26 S. W. 864. Certified questions (28 S. W. 266). 87 T. 273 (28 S. W. 273).
- Campbell v. Harris**, 4 C. A. 636 (23 S. W. 35). Writ of error refused.
- Campbell v. McFadden**, 9 C. A. 379 (31 S. W. 436). Writ of error refused.
- Campbell Pr. Press Mfg. Co. v. Powell**, 36 S. W. 1005. Writ of error refused.
- Campbell v. Riviere**, 22 S. W. 993. Writ of error refused.
- Campbell v. T. & P. Ry. Co.**, 16 C. A. 665 (39 S. W. 1105). Writ of error refused.
- Campbell v. Wiggins**, 2 C. A. 1 (20 S. W. 730). Writ of error refused. 85 T. 451 (21 S. W. 599). Affirmed on certificate of dissent. 85 T. 424.
- Can. & Am. T. Co. v. Edin. Am. Ld. Mtg. Co.**, 16 C. A. 520 (41 S. W. 140; 42 Id. 864). Writ of error refused.
- Canadian Am. Mtg. & Tr. Co. v. McCarty**, 34 S. W. 306. Writ of error refused.
- Canfield v. Moore**, 16 C. A. 472 (41 S. W. 718). Writ of error refused.
- Cape v. Thompson**, 21 C. A. 681 (53 S. W. 368). Writ of error refused.
- Capitol Freehold Land & Inv. Co. v. Pecos & Northern Ry. Co.**, 1 T. C. R. 483. Writ of error refused. 60 S. W. 286.
- Caplen v. Compton**, 5 C. A. 410 (27 S. W. 24). Writ of error refused.
- Capps v. Deegan**, 50 S. W. 151. Writ of error refused. 92 T. 600.
- Capps v. Garvey**, 41 S. W. 379. Writ of error granted. Reversed and judgment of District Court affirmed by agreement.
- Capps & Canty v. Leachamn**, 35 S. W. 397. Writ of error granted. (Certified questions, 40 S. W. 1096.) Re-

- versed and remanded. 89 T. 690 (36 S. W. 250). 90 T. 499L (39 S. W. 917).
- Carden v. Short, 31 S. W. 246. Writ of error refused.
- Carey-Lombard Lumber Co. v. First Natl. Bank of Ballinger, 24 S. W. 702. Certified questions. 86 T. 299 (24 S. W. 260).
- Carey v. Starr (M., K. & T. Ry. Co., v. Starr, 55 S. W. 393). Writ of error granted. Reversed and rendered. 93 T. 508.
- Carhart v. Brown, 25 S. W. 331. Writ of error granted. Reversed and remanded. 86 T. 425 (25 S. W. 415).
- Carleton v. Goebler, 58 S. W. 829. Certified questions. 59 S. W. (C. A.) 1135.
- Carlton v. Hausler, 20 S. W. 275 (49 S. W. 118). Writ of error refused.
- Carmichael v. Ballard, 31 S. W. 80. Writ of error refused.
- Carothers v. Lange, 55 S. W. 580. Writ of error refused, June 21, 1900.
- Carpenter v. Hannig, 34 S. W. 774. Writ of error refused.
- Carson v. Taylor, 47 S. W. 395. Writ of error refused.
- Carter-Battle Grocery Co. v. Jackson & Dechman, 18 C. A. 353 (45 S. W. 615). Writ of error refused.
- Carter v. Hussey, 46 S. W. 270. Writ of error refused.
- Carter v. Thompson, 52 S. W. 92. Writ of error refused.
- Cartwright v. Trueblood, 38 S. W. 834. Writ of error granted. Reversed and remanded. 90 T. 535 (39 S. W. 930).
- Carver v. First Natl. Bank of Crockett, 18 C. A. 425 (45 S. W. 475). Writ of error refused.
- Carver v. Payne (no written opinion below). Writ of error refused.
- Cass Co. v. Wilbarger Co., 1 T. C. R. 794. Application dismissed. 64 S. W. 988.
- Caswell v. Hopson, 47 S. W. 54. Writ of error refused.
- Castles v. Kemp Gro. Co. (See Kemp Gro. Co. v. Castles.)
- Cates v. Unknown Heirs of Alston, 1 T. C. R. 304. Application refused.
- Cauthen v. Roberts & Phillips. (See Darby & Cauthen v. Roberts & Phillips.)
- Central Coal & C. Co. v. Henry, 47 S. W. 281. Writ of error refused.
- Central Texas & N. W. Ry. Co. v. Bush, 34 S. W. 133. Writ of error refused.

- Central Texas & N. W. Ry. Co. v. Douglass, 36 S. W. 120.
Writ of error granted. Affirmed and judgment rendered.
90 T. 125 (37 S. W. 1132).
- Central Texas & N. W. Ry. Co. v. Holloway, 54 S. W. 419.
Writ of error refused.
- Central Wharf & W. Co. v. City of Corpus Christi, 57 S. W.
982. Writ of error refused.
- Cervenka v. Dyches, 32 S. W. 316. Writ of error refused.
- Chace v. Gregg, 31 S. W. 76. Writ of error granted. Af-
firmed. 88 T. 552 (32 S. W. 520).
- Chadwick v. Queen Ins. Co., 35 S. W. 26. Writ of error re-
fused.
- Chaison v. Beauchamp, 12 C. A. 109 (34 S. W. 303). Writ
of error refused.
- Chambers v. Gilbert, 17 C. A. 106 (42 S. W. 630). Writ of
error refused.
- Chambers v. Kerr, 6 C. A. 373 (24 S. W. 1118). Writ of
error refused.
- Chamberlain v. Fox, 54 S. W. 297. Application dismissed.
- Chamberlain v. Leland, 60 S. W. 435. Reversed. 62 S.
W. 740.
- Chandler v. New England Loan & T. Co. (See N. E. Loan
& Trust Co. v. Willis.)
- Chandler v. Peters, 44 S. W. 867. Writ of error refused.
- Chapman v. Chapman, 11 C. A. 392 (32 S. W. 564). Writ
of error refused. 88 T. 641 (16 C. A. 382; 41 S. W.
533; 32 S. W. 871).
- Chapman v. Mansfield, 29 S. W. 820. Writ of error refused.
- Charles v. Chaney, 26 S. W. 169. Writ of error refused.
- Chase v. York County Savings Bank, 89 T. 316 (36 S. W.
406).
- Chesnutt v. Chism, 48 S. W. 549. Application dismissed.
- Chesser v. Clamp, 10 C. A. 350 (30 S. W. 466). Writ of
error refused.
- Chester v. Breitling, 30 S. W. 464. Writ of error granted.
Judgment of court of civil appeals affirmed and cause re-
manded. 88 T. 586 (32 S. W. 527).
- Cheevers v. Anders, 25 S. W. 324. Writ of error granted.
Reversed and remanded. 87 T. 288 (28 S. W. 274).
- Chicago, R. I. & T. Ry. Co. v. Langston, 19 C. A. 568 (47 S.
W. 1027; 48 Id. 610). On certificate of dissent. Ma-
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- City of San Antonio v. Rische, 38 S. W. 388. Writ of error refused.
- City of San Antonio v. Rivas, 57 S. W. 755. Writ of error refused.
- City of San Antonio v. San Antonio St. Ry. Co., 22 C. A. 148 (54 S. W. 281). Writ of error refused.
- City of San Antonio v. Schneider, 37 S. W. 767. Application dismissed.
- City of San Antonio v. Smith, 57 S. W. 881. Reversed. 59 S. W. 1109.
- City of San Antonio v. Sullivan, 57 S. W. 45. Writ of error refused.
- City of Sherman v. Connor, 25 S. W. 321. Writ of error granted. Reversed and remanded. 88 T. 35 (29 S. W. 2053).
- City of Sherman v. Langham, 40 S. W. 140. Writ of error granted. Reversed and rendered. 92 T. 13 (42 S. W. 691).
- City of Sherman v. Shobe (opinion not yet published). Reversed and rendered. 58 S. W. 949.
- City of Sherman v. Smith, 12 C. A. 580 (35 S. W. 294). Application dismissed.
- City of Waco v. Chamberlain, 45 S. W. 191. Writ of error granted. Reversed and rendered. 92 T. 207 (47 S. W. 527).
- City of Waco v. McNeil, 29 S. W. 1109. Writ of error granted. Reversed and rendered. 89 T. 83 (33 S. W. 322).
- City of Waco v. Prather, 35 S. W. 958. Writ of error refused. 90 T. 80.
- City of Whitewright v. Taylor, 57 S. W. 311. Writ of error refused.
- Citizens Natl. Bank v. Jones, 22 C. A. 45 (54 S. W. 405). Writ of error refused.
- Citizens Railway Co. v. Washington, 1 T. C. R. 37. Application refused. 58 S. W. 1042.
- Citizens Ry. Co. v. Ford, 1 T. C. R. 558. Dismissed. 93 T. 110 (60 S. W. 680; 53 S. W. 575; 53 S. W. [C. A.] 1118).
- City Natl. Bank v. Colgin, 21 C. A. 487 (51 S. W. 856). Writ of error refused.
- City Natl. Bank of Fort Worth v. Mechts. Natl. Bank of Fort Worth, 7 C. A. 584 (27 S. W. 848). Writ of error refused. 87 T. 295 (28 S. W. 277).

- City Natl. Bank of Gatesville v. Swink**, 49 S. W. 130. Application dismissed.
- City Railway Co. v. Thompson**, 20 C. A. 16 (47 S. W. 1038). Writ of error refused.
- City Railway Co. v. Wiggins**, 52 S. W. 577. Writ of error refused.
- City Savings Bank v. Northern Assurance Co.**, 45 S. W. 737. Application dismissed.
- City Water Co. v. State**, 33 S. W. 259. Certified questions. 88 T. 600 (32 S. W. 1033). Writ of error refused.
- Clack v. Hart**, 1 T. C. R. 395. Application refused. 62 S. W. 935.
- Clarendon Land Inv. & Agency Co. v. McLelland Bros.**, 21 S. W. 170. Writ of error granted. Reversed and remanded. 86 T. 179.
- Clarendon Land Inv. & Agency Co. v. McLelland Bros.**, 31 S. W. 1088. Writ of error granted. Reversed and remanded. 89 T. 483 (34 S. W. 98). 89 T. 492 (35 S. W. 474). See 21 S. W. 170 and notes.
- Clairidge v. Lavenberg**, 7 C. A. 155 (26 S. W. 324). Writ of error refused.
- Clark v. Cattron**, 56 S. W. 99. Writ of error refused.
- Clark v. McKnight**, 1 T. C. R. 833. Application refused. 58 S. W. 140.
- Clark & Courts v. Reeves Co.**, 1 T. C. R. 311. Application refused. 61 S. W. 981.
- Clark & Courts v. San Jacinto County**, 18 C. A. 204 (45 S. W. 315). Application dismissed.
- Clark & Plumb v. Gregory, Cooley & Co.**, 26 S. W. 244. Writ of error granted. Reversed and remanded. 87 T. 189 (26 S. W. 939).
- Clark v. Regan**, 45 S. W. 169. Writ of error refused. 91 T. 616.
- Clark v. West Pub. Co.**, 26 S. W. 527. Application dismissed.
- Clark v. Winn**, 19 C. A. 223 (46 S. W. 915). Writ of error refused.
- Clarkson v. Graham**, 21 C. A. 355 (52 S. W. 269). Writ of error refused.
- Classen v. Elmendorf**, 37 S. W. 245. Certificate of dissent. Decision approved. 37 S. W. 1062. Affirmed. 90 T. 204.

- Classen v. Elmendorf, 47 S. W. 1023. Writ of error granted. Reversed and remanded. 92 T. 472.
- Clay County Land & C. Co. v. Angelina County, 55 S. W. 1121. Writ of error refused.
- Clayton v. Galveston County, 20 C. A. 591 (50 S. W. 737). Writ of error refused.
- Clayton v. Hurt, 33 S. W. 376. Certified questions. 32 S. W. 876.
- Clever v. Duke, 58 S. W. 145. Application dismissed.
- Cleburne W. L. & I. Co. v. City of Cleburne, 13 C. A. 141 (35 S. W. 733). Writ of error refused.
- Clemens v. Walker, 40 S. W. 1096. Application dismissed.
- Clemons v. Clemons, 45 S. W. 199. Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 66.
- Clements v. Clements, 18 C. A. 617 (46 S. W. 61). Application.
- Cleveland v. Carr, 40 S. W. 406. Certified questions. Certificate dismissed. 90 T. 393. (38 S. W. 1123).
- Cleveland v. Cleveland, 30 S. W. 825. Writ of error granted. Reversed and judgment of district court affirmed. 89 T. 445.
- Cleveland & Cameron v. Heidenheimer, 44 S. W. 551. Writ of error granted. 46 S. W. 30. Affirmed. 92 T. 108.
- Cleveland Sch. Fur. Co. v. Hotchkiss, 33 S. W. 855. Writ of error granted. Reversed and rendered. 89 T. 117.
- Clifford v. Leroux, 14 C. A. 340 (37 S. W. 172, 254). Writ of error refused.
- Clutter v. Davis, 1 T. C. R. 656. Application refused. 62 S. W. 1107.
- Coapland v. Lake, 28 S. W. 104. Application dismissed. 87 T. 261.
- Coates v. Bush, 56 S. W. 617. Writ of error refused.
- Cobb v. Barber, 47 S. W. 963. Certified questions. 92 T. 309.
- Cobb & Avery v. Trammell, 30 S. W. 482. Writ of error refused.
- Cobb v. Campbell, 14 C. A. 433 (38 S. W. 246). Writ of error refused.
- Cobb v. First Natl. Bank of Decatur, 42 S. W. 770. Certified questions. 91 T. 226.

- Coe v. Foree, 20 C. A. 550 (50 S. W. 616). Writ of error refused.
- Coe v. Nash, 40 S. W. 235. Writ of error granted. Reversed and remanded. 91 T. 113 (41 S. W. 473).
- Cohen v. Grimes, 18 C. A. 327 (45 S. W. 210). Writ of error refused.
- Cohen v. Simpson, 32 S. W. 59. Application dismissed.
- Cole v. Adams, 46 S. W. 790; 49 S. W. 1052. Certified questions. 19 C. A. 507.
- Cole v. Grigsby, 35 S. W. 680. Writ of error granted. Affirmed. 89 T. 223 (35 S. W. 792).
- Cole v. Swanson, 55 S. W. 373. Writ of error refused.
- Colcnar v. Davis, 36 S. W. 103. Application dismissed.
- Coleman v. First Nat. Bank, (See 43 S. W. 938). Affirmed. 63 S. W. 867.
- Coleman v. Flörey, 1 T. C. R. 223. Application dismissed. 61 S. W. 412.
- Coleman v. Reavis, 34 S. W. 645. Writ of error refused.
- College Park Elec. Belt Line v. Ide & Son, 15 C. A. 273 (40 S. W. 64; 39 S. W. 915). Application dismissed. 90 T. 509.
- Collier v. Betterton, 8 C. A. 479 (29 S. W. 490, 467). Writ of error refused. 87 T. 440 (29 S. W. 467).
- Collier v. Coutts, 45 S. W. 485. Writ of error granted. Reversed and remanded. 92 T. 234 (47 S. W. 525).
- Collier v. Peacock, 93 T. 255 (54 S. W. 1025). Certified questions. 55 S. W. (C. A.) 756.
- Collins v. Ferguson, 22 C. A. 552 (56 S. W. 225). Writ of error refused.
- Collyns v. Cain, 9 C. A. 193 (28 S. W. 544; 30 S. W. 858). Writ of error refused. 87 T. 612.
- Columbia Ave. S. F. S. D. & T. Co, v. Strawn (no published opinion). Writ of error granted. Reversed and rendered. 93 T. 48.
- Columbia Carriage Co. v. Hatch, 19 C. A. 120 (47 S. W. 288). Writ of error refused.
- Comanche Co. v. Brightman, 1 T. C. R. 638. Application granted. 62 S. W. 973.
- Commissioners' Court of Wilbarger Co. v. Perkins, 24 S. W. 794. Certified questions. 86 T. 348.
- Compton, Ault & Co. v. Marshall, 25 S. W. 441. Writ of error granted. Affirmed. 88 T. 50 (27 S. W. 121).

- 88 T. 55 (28 S. W. 518). 88 T. 56 (29 S. W. 1059).
- Compton v. Holmes, 63 S. W. 622. Certified questions.
- Compton v. Seley, 23 S. W. 1077. Writ of error refused.
- Conklin v. City of El Paso, 44 S. W. 879. Writ of error refused. Rehearing denied. 91 T. 537 (44 S. W. 988).
- Conn v. Hagan (no published opinion). Writ of error granted. Reversed and remanded. 93 T. 334.
- Connecticut Ins. Co. v. Chase, 33 S. W. 602. Writ of error refused. 89 T. 212.
- Conn. Fire Ins. Co. v. Davenport (see Phoenix Ins. Co. v. Davenport).
- Connor v. City of Paris, 27 S. W. 88. Writ of error granted. Reversed and rendered. 87 T. 32.
- Connor v. Saunders, 9 C. A. 56 (29 S. W. 1140). Writ of error refused.
- Connor v. Sewell, 39 S. W. 128. Application dismissed. 90 T. 275.
- Consolidated K. C. S. & R. Co. v. Conrig, 33 S. W. 547. Writ of error refused.
- Continental Fire Assn. v. Masonic Temple Co., 1 T. C. R. 582. Application refused. 62 S. W. 930.
- Continental Fire Ins. Co. v. Chase, 33 S. W. 602. Writ of error refused. 89 T. 212 (34 S. W. 93).
- Cont. Ins. Co. v. McCulloch, 15 C. A. 190 (39 S. W. 374). Application dismissed.
- Converse v. Davis, 37 S. W. 247. Writ of error granted. Reversed and remanded. 90 T. 462 (39 S. W. 277).
- Converse v. Peterson (see Walker v. Peterson).
- Cook v. Carroll Land & Cattle Co., 39 S. W. 1006 (see 25 S. W. 1034). Writ of error refused.
- Cook & Bernheimer Co. v. Hunt, 18 C. A. 314 (45 S. W. 153). Writ of error refused.
- Cope v. Lindsey, 17 C. A. 203. 91 T. 391 (43 S. W. 29, 871). Writ of error granted. Affirmed and rendered. 91 T. 463.
- Coapland v. Lake, 28 S. W. 104. Application dismissed. See 87 T. 261 (17 S. W. 786; 29 S. W. 39).
- Cooper v. Hiner, 36 S. W. 915. Certified questions. 45 S. W. 554.
- Cooper v. Mayfield, 57 S. W. 48. Writ of error granted. Affirmed. 1 T. C. R. 19 (58 S. W. 827).

- Cooper Gro. Co. v. Moore, 19 C. A. 283 (46 S. W. 665).
Writ of error refused.
- Cooper v. Yoakum, 43 S. W. 871. Certified questions. 91 T. 391.
- Corbett v. Provident Nat. Bank, 57 S. W. 61. Writ of error refused. (No written opinion).
- Cordray v. Neuhaus, 1 T. C. R. 562-783. Application refused. 61 S. W. 415.
- Corley v. Goll, 27 S. W. 819. Writ of error refused.
- Cornell v. G. C. & S. F. Ry. Co. (No written opinion). Application dismissed.
- Cotter v. Casteel, 37 S. W. 791. Writ of error refused.
- Cotton v. Coit, 30 S. W. 281. Writ of error granted. Reversed and rendered. 88 T. 414 (31 S. W. 1061).
- Cotton v. Patterson, 1 T. C. R. 152. Application refused. 59 S. W. 568.
- Cotton v. Rand, 29 S. W. 682. Application dismissed.
- Cotton States Building Co. v. Jones and Wife, 1. T. C. R. 487. Application granted. 61 S. W. 428. Reversed. 62 S. W. 741.
- Cotton v. Rand, 51 S. W. 55. Writ of error granted. Reversed and remanded in part. 93 T. 7.
- Coutlett v. U. S. Mortgage Co., 1 T. C. R. 677. Application refused. 60 S. W. 817; 58 S. W. 997.
- Coverdill v. Seymour, 56 S. W. 221. Writ of error granted. Reformed and rendered. 57 S. W. 37, 635.
- Cowen v. Bloomberg, 15 C. A. 364 (39 S. W. 947). Writ of error refused.
- Cowen v. First Natl. Bank of Brownsville, 63 S. W. 532. Certified questions.
- Cox v. Finks, 41 S. W. 95. Application dismissed. 91 T. 318 (43 S. W. 1).
- Cox v. Morrison, 31 S. W. 85. Writ of error refused.
- Craddock v. Burleson, 21 C. A. 250 (52 S. W. 644). Writ of error refused.
- Craig v. Bennett (no written opinion). Writ of error refused.
- Craig v. Dumars, 7 C. A. 28 (26 S. W. 743). Writ of error refused.
- Crane v. Turner, 47 S. W. 822. Writ of error refused.
- Crary v. Port Arthur C. & D. Co., 45 S. W. 842. Application dismissed. 47 S. W. 967; 49 S. W. 703.
- Crawford v. Gillespie (see Gillespie v. Crawford).

- Crawford Co. Bank v. Henry**, 41 S. W. 201. Writ of error refused.
- Crawford v. McDonald**, 33 S. W. 325. Writ of error granted. Affirmed. 88 T. 626 (33 S. W. 325).
- Crawford v. Saunders**, 29 S. W. 102. Application dismissed.
- Crenshaw v. Hedrick**, 19 C. A. 52 (47 S. W. 71). Writ of error refused.
- Creswell R. & C. Co. v. Roberts County**, 27 S. W. 737. Writ of error refused.
- Crider v. San Antonio R. E. B. & L. Assn.**, 35 S. W. 237. Certified questions. 89 T. 597 (35 S. W. 1047).
- Croley v. St. L. S. W. Ry. Co.**, 56 S. W. 615. Application dismissed.
- Croom v. Jerome Hill Cotton Co.**, 15 C. A. 328 (40 S. W. 146). Writ of error refused.
- Croom v. Winston**, 18 C. A. 1. Writ of error refused.
- Crosby v. Crosby**, 49 S. W. 359. Certified questions. 92 T. 441.
- Cross v. Moores**, 55 S. W. 373. Application dismissed.
- Crosson v. Dwyer**, 9 C. A. 482 (30 S. W. 929). Writ of error refused.
- Crouch v. Johnson**, 7 C. A. 435 (27 S. W. 9). Writ of error refused.
- Crow v. Fiddler**, 3 C. A. 576 (23 S. W. 17). Writ of error refused.
- Crow v. Groesbeck**, 39 S. W. 1003. Writ of error granted. Reversed and judgment of district court affirmed. 91 T. 74 (40 S. W. 1028).
- Cruger v. McCracken**, 26 S. W. 282. Writ of error refused.
- Cruger v. McCracken**, 30 S. W. 373. Writ of error granted. Reversed and remanded. 87 T. 584 (30 S. W. 537).
- Cruger v. Sullivan**, 11 C. A. 377 (32 S. W. 448). Writ of error refused.
- Crystal Ice Mfg. Co. v. State**, 56 S. W. 562. Writ of error refused.
- Cruse v. Deering**, 24 S. W. —. Application dismissed.
- Cueller v. De Witt**, 5 C. A. 568 (24 S. W. 671). Writ of error refused.
- Culmell v. Borroun**, 13 C. A. 458 (35 S. W. 942; 37 S. W. 313). Writ of error refused. 90 T. 93.
- Culmore v. Medlenka**, 44 S. W. 676. Writ of error refused.

- Cumby v. Henderson*, 6 C. A. 519 (25 S. W. 673). Writ of error refused.
- Cumpston v. T. & P. Ry. Co.*, 33 S. W. 737. Writ of error refused.
- Cunningham v. Austin & N. W. Ry. Co.*, 31 S. W. 629. Certified questions. 88 T. 534.
- Cunningham v. Fairchild & Hobson*, 43 S. W. 32. Writ of error refused.
- Cunningham v. Holt*, 12 C. A. 150 (33 S. W. 381). Writ of error refused.
- Cunningham v. Mathews*, 57 S. W. 855. Writ of error refused. (No written opinion).
- Curdy v. Stafford*, 28 S. W. 1011. Writ of error granted. Reversed and remanded. 88 T. 120 (30 S. W. 551).
- Curlin v. Can. & Amer. Mort. & Trust Co.*, 37 S. W. 484. Writ of error granted. Reversed and remanded. 90 T. 376 (38 S. W. 766). 90 T. 380.
- Curran v. Texas Land & Mortg. Co.*, 1 T. C. R. 589. Application refused. 60 S. W. 466.
- Cushing v. Evans Co.*, 33 S. W. 703. Writ of error refused.
- Dallas Con. Tract. Ry. Co. v. Hurley* 10 C. A. 246 (37 S. W. 73). Writ of error refused.
- Dallas Elec. Co. v. City of Dallas*, 58 S. W. 153. Writ of error refused.
- Dallas Natl. Bank v. Davis Bros.*, 36 S. W. 144. Writ of error refused.
- Daniel v. Hutcheson*, 22 S. W. 278. On certificate of dissent. Judgment of majority reversed. Judgment of district court affirmed. 86 T. 51 (22 S. W. 933).
- Daniel v. Mason*, 36 S. W. 1113. Writ of error granted. Reversed and remanded. 90 T. 162 (37 S. W. 1061). 90 T. 240 (38 S. W. 161).
- D. A. Tompkins Co. v. Gal. City St. Ry. Co.*, 4 C. A. 1 (23 S. W. 25). Writ of error refused.
- Darby & Cauthen v. Roberts & Phillips*. Affirmed February 23, 1897. No published opinion. Writ of error refused.
- Darnall v. Lyon*, 22 S. W. —. Certified questions. 85 T. 455 (22 S. W. 304). Rehearing refused. 85 T. 473 (22 S. W. 960).
- Darrow v. Summerhill*. Writ of error granted. Reversed. 57 S. W. 942. 93 T. 92, on certified questions. 58 S. W. 158; 53 S. W. 680.

- Daugherty v. New York & T. L. Co.**, 1 T. C. R. 266. Dismissed. 61 S. W. 947.
- Davenport v. Abbott**, 28 S. W. 218. Application dismissed.
- Davenport v. Eastland**, 60 S. W. 243. Certified question.
- Davidson v. Ikard**. Affirmed on certificate without written opinion. Writ of error granted. Affirmed. 86 T. 67 (23 S. W. 379).
- Davidson v. Wallingford**, 30 S. W. 286, 827. Writ of error granted. Reversed and remanded. 88 T. 619 (32 S. W. 1030).
- Davies v. Thompson**, 50 S. W. 1062. Writ of error refused. 92 T. 391 (49 S. W. 215).
- Davis v. Andrews**, 27 S. W. 1033. Writ of error granted. Reversed and rendered. 88 T. 524 (30 S. W. 432). 88 T. 532 (32 S. W. 513).
- Davis v. Bargas**, 33 S. W. 548. Certified questions. 88 T. 662 (32 S. W. 874).
- Davis v. Bingham**, 33 S. W. 1035. Application dismissed.
- Davis v. Bingham**, 56 S. W. 132. Writ of error refused.
- Davis v. Converse**, 46 S. W. 910. Writ of error refused.
- Davis v. Davis**, 20 C. A. 310 (49 S. W. 726). Writ of error refused.
- Davis v. Harper**, 17 C. A. 88 (42 S. W. 788). Application dismissed.
- Davis v. Hertman**, 48 S. W. 50. Writ of error refused.
- Davis v. H. & T. C. Ry. Co.**, 1 T. C. R. 644. Application refused. 59 S. W. 844.
- Davis v. Lanier**, 60 S. W. 1018. Writ of error refused. 61 S. W. 385.
- Davis v. McCabe**, 46 S. W. 837. Application dismissed.
- Davis v. Portwood**, 20 C. A. 548 (50 S. W. 615). Writ of error refused.
- Davis v. S. A. & A. P. Ry. Co.**, 44 S. W. 1012. Writ of error refused.
- Davis v. S. A. & G. S. Ry. Co.**, 44 S. W. 1012. Writ of error granted. Reversed and remanded. 92 T. 642.
- Davis v. Taylor**, 38 S. W. 543. Writ of error refused.
- Davis v. T. & P. Ry. Co.**, 42 S. W. 1008. Writ of error granted. Reversed and remanded. 91 T. 505 (44 S. W. 822).
- Davis v. Van Wie**, 30 S. W. 492. Writ of error refused.

- Davis v. Washington**, 18 C. A. 67 (43 S. W. 585). Writ of error refused.
- Dawson v. McLeary**, 25 S. W. 705. Writ of error granted. Reversed and remanded. 87 T. 524 (29 S. W. 1044).
- Dawson v. St. Ex. Met. F. P. Co.**, 59 S. W. 847. Application dismissed. 61 S. W. 118.
- Day Land & C. Co. v. N. Y. & T. Ld. Co.**, 25 S. W. 1039. Application dismissed.
- Dean v. State ex rel. Bailey**, 31 S. W. 546. Certified questions. 88 T. 290 (30 S. W. 1047); 88 T. 296 (31 S. W. 185).
- De Begue v. Owen** (memorandum opinion, unpublished). Application dismissed.
- DeCamp, Leroy & Co. v. Bates & Co.**, 37 S. W. 644. Writ of error refused.
- Decatur C. S. Oil Co. v. Johnson**, 35 S. W. 951. Writ of error refused.
- DeCordova v. Bliss**, 12 C. A. 530 (34 S. W. 146). Writ of error refused.
- Degenhart v. Short**, 15 C. A. 636 (40 S. W. 150). Writ of error refused.
- Deham (De Harn) v. Mex. Natl. Ry. Co.**, 22 S. W. 249. Writ of error refused. 86 T. 68 (23 S. W. 381). **De Harn v. Mex. Natl. Ry. Co.**, 86 T. 68.
- DeKoven v. Rogers** (see *Birdseye v. Rogers*).
- De la Garza v. Grand Lodge A. O. U. W.** (see *Grand Lodge, etc. v. Cleghorn*).
- De la Garza v. McManus**, 44 S. W. 704. Writ of error refused.
- De la Vergne Refrig. Mach. Co. v. Stahl**, 1 T. C. R. 361. Application refused. 60 S. W. 319.
- Delaware Ins. Co. v. Bonnet**, 20 C. A. 107 (48 S. W. 1104). Writ of error refused.
- Delaware Ins. Co. v. Security Co.**, 54 S. W. 916. Writ of error granted. Reversed and judgment of district court affirmed. **Security Co. v. Panhandle Natl. Bank**. 93 T. 575.
- Delling v. Waddell**, 1 T. C. R. 841. Application refused.
- Denison & P. Sub. Ry. Co. v. Cummins**, 42 S. W. 588. Writ of error refused.
- Denison & P. Sub. Ry. Co. v. Evans**, 47 S. W. 280. Writ of error refused.

- Denison & P. Sub. Ry. Co. v. O'Maley, 18 C. A. 200 (45 S. W. 225; 45 S. W. 227). Writ of error refused.
- Denison & P. Sub. Co. v. Pastora, 47 S. W. 1119. Writ of error refused.
- Denison & P. Sub. Ry. Co. v. Smith, 19 C. A. 114 (47 S. W. 278). Writ of error refused.
- Denny v. Cotton, 3 C. A. 634 (22 S. W. 122). Writ of error refused.
- Desmuke v. Houston, 31 S. W. 198. Writ of error granted. Affirmed. 89 T. 10 (32 S. W. 1025).
- De Voegler v. W. U. Tel. Co., 10 C. A. 229 (30 S. W. 1107). Writ of error refused.
- Dew v. Dew, 57 S. W. 926. Writ of error refused. (No written opinion).
- De Ware v. Bailey, 4 S. W. 323. Application dismissed. 91 T. 91 (40 S. W. 966).
- De Zbranikov v. Burnett, 10 C. A. 442 (31 S. W. 71). Writ of error refused.
- Diamond St. Iron Co. v. S. A. & A. P. Ry. Co., 11 C. A. 587 (33 S. W. 987). Writ of error refused.
- Dick v. Malone, 58 S. W. 168. Writ of error refused. (No written opinion).
- Dickson v. Moore, 9 C. A. 514 (30 S. W. 76). Writ of error refused.
- Dickinson v. Marx & Blum (see Marx & Blum v. Luling Co-Op. Assn.).
- Dignowity v. Elmendorf, 40 S. W. 1005. Writ of error refused.
- Dillingham v. Blake, 32 S. W. 77. Writ of error refused.
- Dillingham v. Crank, 27 S. W. 38. Affirmed. 87 T. 104 (27 S. W. 93).
- Dillingham v. Ellis (no published opinion). Writ of error granted. Reversed and remanded. 86 T. 447 (25 S. W. 618).
- Dillingham v. Fields, 29 S. W. 214. Writ of error refused.
- Dillingham v. Harden, 6 C. A. 474 (26 S. W. 914). Writ of error refused.
- Dillingham v. Richards, 27 S. W. 1061. Application dismissed. 87 T. 247 (26 S. W. 272).
- Dillingham v. Scales, 24 S. W. 975. Writ of error refused.
- Dilly & Son v. Freedman & Bro., 1 T. C. R. 455. Application refused. 60 S. W. 448.

- Dimmit County v. Frazier, 27 S. W. 829. Writ of error refused.
- Dimmit County v. Oppenheimer, 42 S. W. 1029. Writ of error refused.
- Dittman v. Iselt, 52 S. W. 96. Application dismissed. Assman v. Dittman. 93 T. 37.
- Dixon v. Natl. Loan & Inv. Co., 40 S. W. 541. Writ of error refused.
- Dodge v. Signor, 18 C. A. 45 (44 S. W. 926). Writ of error refused.
- Dodson v. Wortham, 45 S. W. 858. Writ of error refused.
- Dodson v. Wortham, 18 C. A. 666 (45 S. W. 858). Writ of error refused.
- Doherty v. Jones (see Jones v. Doherty).
- Dohoney v. Womack, 1 C. A. 354 (20 S. W. 950). Writ of error refused.
- Donaldson v. Rall, 14 C. A. 336 (37 S. W. 16). Application dismissed.
- Dorroh v. McKay, 56 S. W. 611. Application dismissed.
- Douglass v. Blount, 22 C. A. 493 (55 S. W. 526). Application dismissed. 93 T. 499.
- Dowdell v. McBride. 92 T. 239 (47 S. W. 524). Certified questions. 18 C. A. 645 (45 S. W. 397).
- Dowlen v. Callahan County (memorandum opinion, unpublished). Writ of error refused.
- Downard v. Natl. L. & I. Co. of Detroit, 22 C. A. 570 (55 S. W. 981). Writ of error refused.
- Doxey v. Westbrook, 1 T. C. R. 474. Dismissed. 62 S. W. 787.
- Drake v. State, 23 S. W. 398, 620. Writ of error granted. Reversed and judgment of district court affirmed. 86 T. 329 (24 S. W. 790).
- Drew v. Ellis, 6 C. A. 507 (26 S. W. 95). Writ of error refused.
- Driggs v. Grantham, 41 S. W. 408. Writ of error refused.
- Dwight-Skinner & Co. v. Matthews-Miller & Co., 1 T. C. R. 585. Application granted. 60 S. W. 805. Reversed. 62 S. W. 1052.
- Dublin Cotton Oil Co. v. Jarrard, 40 S. W. 531. Writ of error granted. Affirmed. 91 T. 289 (42 S. W. 959).
- Dublin v. T. B. & H. Ry. Co., 49 S. W. 667. Writ of error granted. Reversed and remanded. 92 T. 535.

- Duer v. Supreme Council, O. of C. F., 21 C. A. 493 (52 S. W. 109). Writ of error refused.
- Duke v. Cleaver, 19 C. A. 218 (46 S. W. 1128). Application dismissed.
- Dulaney v. Walsh, 90 T. 329 (37 S. W. 615). Writ of error granted. Affirmed. 90 T. 329 (38 S. W. 748).
- Dunham, B. & Co. v. McNatt, 15 C. A. 552 (39 S. W. 1016). Writ of error refused.
- Dunham B. & Co. v. Randall C. & Co., 11 C. A. 265 (32 S. W. 720). Writ of error refused.
- Dunn v. Price, 28 S. W. 681. Writ of error granted. Reversed and remanded. 87 T. 318.
- Dupree v. Frank, 39 S. W. 988. Writ of error granted. Reversed and judgment of district court affirmed. 91 T. 66 (40 S. W. 962).
- Durrell v. Farwell, 27 S. W. 795. Writ of error granted. Reversed and remanded. 88 T. 98 (30 S. W. 539; 88 T. 109 (31 S. W. 185)).
- Duren v. H. & T. C. Ry. Co., 24 S. W. 258. Certified questions. 86 T. 287.
- Durst v. Mann, 35 S. W. 949. Application dismissed. 90 T. 76 (37 S. W. 311).
- Duveneck v. Kutzer, 17 C. A. 577 (43 S. W. 541). Writ of error refused.
- Eagle Mfg. Co. v. Hannaway. Certified questions. 90 T. 581 (40 S. W. 13).
- Earle v. City of Henrietta, 41 S. W. 727. Certified questions. 91 T. 301 (43 S. W. 15).
- Easley v. End. Rank K. of P. 36 S. W. —. Affirmed April 29, 1896. Writ of error refused.
- E. Texas Ld. & Imp. Co. v. Shelby, 17 C. A. 685 (41 S. W. 542). Writ of error refused.
- E. Texas Ld. & Imp. Co. v. Texas Lumber Co., 21 C. A. 411 (52 S. W. 645). Writ of error refused.
- East Texas Ins. Co. v. Harris, 25 S. W. 720. Writ of error refused.
- East Texas Fire Ins. Co. v. Kempner, 25 S. W. 999. Writ of error granted. Reversed and remanded. 87 T. 229.
- East Texas Fire Ins. Co. v. Kempner, 12 C. A. 533 (34 S. W. 393). Writ of error refused. 89 T. 652.

- East Texas Fire Ins. So. v. Perkey, 24 S. W. 1080. Writ of error granted. Reversed and remanded. 89 T. 604 (35 S. W. 1050).
- Easterwood v. Dun, 19 C. A. 320 (47 S. W. 285). Writ of error refused.
- Eastland v. Williams, 45 S. W. 412. Writ of error granted. Reformed and affirmed. 92 T. 113 (46 S. W. 32).
- Eberstadt v. State, 20 C. A. 164 (49 S. W. 654). Writ of error refused. 45 S. W. 1007.
- Eckford v. Berry, 27 S. W. 840. Writ of error granted. Reversed and remanded. 87 T. 415 (28 S. W. 937).
- Eddy v. Cross & Newton, 22 S. W. 533. Writ of error refused.
- Eddy v. Prentice, 8 C. A. 58 (27 S. W. 1063). Writ of error refused.
- Edinburgh-Am. Ld. Mtg. Co. v. Briggs, 41 S. W. 1036. Writ of error refused.
- Eddins v. Morris, 44 S. W. 203. Writ of error refused.
- Edling v. Burnett, 19 C. A. 287 (46 S. W. 907). Writ of error refused.
- Edmonds v. City of San Antonio, 14 C. A. 155 (36 S. W. 495). Writ of error refused.
- Edmonds v. Iron City Natl. Bank, 32 S. W. 1067. Writ of error refused.
- Edwards v. Edwards, 14 C. A. 87 (36 S. W. 1080). Writ of error refused.
- Edwards v. Hornburger, 55 S. W. 42. Writ of error refused.
- Edwards v. Humphreys, 89 T. 514 (36 S. W. 333). Writ of error granted. Affirmed and rendered. 89 T. 512 (36 S. W. 434).
- Edwards v. Irvin, 45 S. W. 1026. Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 258 (47 S. W. 719).
- Edwards v. Morton, 46 S. W. 792. Certified questions. 92 T. 150.
- Edwards County v. Campbell, 12 C. A. 236 (33 S. W. 761). Writ of error refused.
- Edwards County v. Jennings, 33 S. W. 585. Writ of error granted. Affirmed. 89 T. 618 (35 S. W. 1053).
- Eikel v. Randolph, 6 C. A. 421 (25 S. W. 62). Writ of error refused.

- Elder v. First Natl. Bank of Galveston**, 42 S. W. 125; 43 Id. 19. Writ of error refused. 91 T. 423 (43 S. W. 19; 44 S. W. 62).
- Ellis v. Bonner**, 7 C. A. 539 (27 S. W. 687). Writ of error refused.
- Ellis v. City of Cleburne**, 35 S. W. 495. Writ of error refused.
- Ellis v. City of Dallas**. Writ of error refused June 25, 1900. See *Dallas Elec. Co. v. City of Dallas*.
- Ellis v. Harrison**, 52 S. W. 581. Writ of error refused.
- Ellis v. Harrison**, 57 S. W. 984. Writ of error refused.
- Ellis v. Hudson**, 44 S. W. 550. Writ of error refused.
- Ellis v. Kerr**, 32 S. W. 444. Writ of error refused (see 23 S. W. 1050).
- Ellis v. Randle**, 1 T. C. R. 657. Application refused. 60 S. W. 462.
- Ellis v. Vernon I. L. & W. Co.**, 4 C. A. 66 (23 S. W. 856). Writ of error refused. 86 T. 109 (23 S. W. 858).
- El Paso G. El. Lt. & P. Co. v. City of El Paso**, 22 C. A. 309 (54 S. W. 798). Writ of error refused.
- El Paso Natl. Bank v. Fuchs**, 34 S. W. 203. Writ of error granted. Reversed and rendered. 89 T. 197 (34 S. W. 206).
- Elser v. City of Fort Worth**, 27 S. W. 739. Writ of error refused.
- Elwell v. Tatum**, 6 C. A. 397 (24 S. W. 71; 25 Id. 434). Writ of error refused.
- Ely v. S. A. & A. P. Ry. Co.**, 15 C. A. 511 (40 S. W. 174). Writ of error refused.
- Emerson v. Bedford**, 21 C. A. 262 (51 S. W. 889). Writ of error refused.
- Endel v. Norris**, 93 T. 540 (57 S. W. 25). Certified questions. 57 S. W. (C. A.) 687.
- Engleman v. Deal**, 14 C. A. 1 (37 S. W. 652). Writ of error refused.
- Ennis Mercantile Co. v. Wathen**, 93 T. 622 (57 S. W. 946). Certified questions. 58 S. W. (C. A.) 971.
- Estell v. Kirby**, 48 S. W. 8. Application dismissed.
- Euless v. Huffman** (oral opinion). Writ of error refused.
- Euless v. Tomlinson**, 38 S. W. 534. Application dismissed.
- Eustis v. City of Henrietta**, 37 S. W. 632. Certificate of dissent. 90 T. 254, 468 (38 S. W. 165).

- Eustis v. City of Henrietta, 41 S. W. 720. Certificate of dissent. 90 T. 468; 91 T. 325 (39 S. W. 567).
- Evans v. Daniel, 60 S. W. 309. Certified questions. 60 S. W. (C. A.) 1012.
- Evans v. Purington, 12 C. A. 158 (34 S. W. 350). Writ of error refused.
- Evans v. U. S. Realty Co. (no written opinion). Application dismissed.
- Evans-Snider-Buel Co. v. First Natl. Bank of Amarillo, 15 C. A. 163 (39 S. W. 213). Writ of error refused.
- Everly v. Driskill, 1 T. C. R. 33. Application refused. 58 S. W. 1046.
- Ewing v. Miles, 12 C. A. 19 (33 S. W. 235). Writ of error refused.
- Exall v. Security Mortg. & Trust Co., 15 C. A. 643 (39 S. W. 959). Writ of error refused.
- Fairbanks Canning Co. v. Marshall, 23 S. W. 246. Writ of error refused (see Bank of California v. Marshall).
- Faires v. Cockrill, 29 S. W. 669. Writ of error granted. Reversed and remanded. 88 T. 428 (31 S. W. 190; 31 S. W. 639) 88 T. 438.
- Fant v. Wicks, 10 C. A. 394 (32 S. W. 126). Writ of error refused.
- Fant v. Wright (see Wright v. U. S. Mtg. Co.).
- Fant v. Wright, 1 T. C. R. 124. 61 S. W. 514. Writ of error pending.
- Farmer v. Aransas County, 21 C. A. 549 (53 S. W. 607). Writ of error refused.
- Farmer v. Cloudt, 1 T. C. R. 198. Application refused. 59 S. W. 614.
- Farmer v. Hale, 14 C. A. 73 (37 S. W. 164). Writ of error refused.
- Farmer v. Hovenkamp (memorandum opinion, unpublished). Writ of error refused.
- Farmer Co. Treasurer v. Shaw, 55 S. W. 1115. Certified questions. 93 T. 438.
- Farmers L. & T. Co. v. Beckley, 93 T. 267 (54 S. W. 1027). Certified questions.
- Farmers Loan & Trust Co. v. Fidelity I. T. & S. D. Co., 41 S. W. 113. Writ of error granted. Reversed and judg-

- ment of district court affirmed. 91 T. 605. Reversed.
91 T. 615 (44 S. W. 70; 44 S. W. 74).
- Farmers and Merchants Natl. Bank v. Taylor, 40 S. W. 876.
Writ of error granted. Affirmed on remittitur. 91 T.
78 (40 S. W. 966).
- Farmers & Merchants Natl. Bank v. Waco E. R. & L. Co.,
36 S. W. 131. Application dismissed. 89 T. 329 (34
S. W. 737).
- Farmers & Merchants Natl. Bank v. Novich, 35 S. W. 294.
Certified questions. 89 T. 381 (34 S. W. 914).
- Farmers & Merchants Natl. Bank v. Templeton, 90 T. 503
(40 S. W. 412; 39 S. W. 914).
- Farrell v. Duffy, 5 C. A. 435 (27 S. W. 20). Writ of error
refused.
- Faulk v. Byerly, 14 C. A. 388 (37 S. W. 984). Writ of
error refused.
- Ferguson v. Johnson, 11 C. A. 413 (33 S. W. 138). Writ of
error refused.
- Ferguson v. McCrary, 20 C. A. 529 (50 S. W. 472). Writ
of error refused.
- Ferguson v. Ricketts, 55 S. W. 975. Writ of error granted.
Reversed and remanded. 93 T. 565.
- Ferguson v. Templeton, 32 S. W. 148. Writ of error granted.
Affirmed. 89 T. 47 (33 S. W. 329).
- Fidelity & Casualty Co. v. Allibone, 15 C. A. 178 (39 S. W.
632). Writ of error refused. 90 T. 78; 90 T. 660 (40
S. W. 399).
- Fidelity & Casualty Co. v. Getzendanner, 22 C. A. 76 (55
S. W. 179). On certificate of dissent. Affirmed. 93
T. 487 (56 S. W. 326; 53 S. W. [C. A.] 838).
- Fidelity Mut. L. Assn. v. Harris (no published opinion).
Writ of error granted. Reversed and rendered for plain-
tiff in error. 57 S. W. 635.
- Fields v. Austin, 30 S. W. 386. Writ of error refused.
- Fields v. Lane (no published opinion). Writ of error re-
fused.
- Fields v. Munster, 11 C. A. (32 S. W. 417). Writ of error
refused. 89 T. 102 (33 S. W. 852).
- Fielder v. M., K. & T. Ry. Co., 42 S. W. 362. Writ of error
granted. Affirmed. 92 T. 176 (46 S. W. 633).
- Fielding v. White, 32 S. W. 1054; 33 Id. 773. Writ of error
refused.

- Figures v. Greas, 39 S. W. 1011. Writ of error refused.
- Filhol v. Blum Land Co., 49 S. W. 669. Writ of error refused.
- Finlay v. Jackson, 43 S. W. 41, 310. Writ of error refused. (See 40 S. W. 427, 1032).
- Finn v. Krut, 13 C. A. 36 (34 S. W. 1013). Writ of error refused.
- Fire Assn. of Philadelphia v. Laning, 31 S. W. 681; 32 Id. 161. Writ of error refused.
- Fire Ass'n of Philadelphia v. Loeb, 1 T. C. R. 537. Application refused. 59 S. W. 617.
- Firemans Fund Ins. Co. v. Shearman, 20 C. A. 343 (50 S. W. 598). Writ of error refused.
- First Baptist Church of Paris v. Fort (no published opinion). Writ of error granted. Reversed and rendered. 93 T. 215.
- First Natl. Bank of Austin v. Sharpe, 12 C. A. 302 (32 S. W. 676). Writ of error refused.
- First Natl. Bank v. Western M. & Inv. Co., 6 C. A. 59 (24 S. W. 691; 26 S. W. 488). Writ of error granted. Reversed and remanded. 86 T. 636.
- First Natl. Bank of Blooming Grove v. Welch (no published opinion). Writ of error refused.
- First Natl. Bank of Corsicana v. Cohen, 55 S. W. 530. Application dismissed.
- First Natl. Bank of Corsicana v. City Natl. Bank of Dallas, 34 S. W. 458. Writ of error refused.
- First Natl. Bank of Crockett v. East, 17 C. A. 176 (43 S. W. 558). Writ of error refused.
- First Natl. Bank of Decatur v. Preston Natl. Bank, 85 T. 560 (22 S. W. 1048). Certified questions. 24 S. W. 668; 22 S. W. 579.
- First Natl. Bank of Gatesville v. Mings, 11 C. A. 302 (32 S. W. 178). Writ of error refused.
- First Natl. Bank of Hastings v. Bonner, 27 S. W. 698. Application dismissed.
- First Natl. Bank of Mason v. Ledbetter, 17 C. A. 613 (42 S. W. 1018). Writ of error refused.
- First Natl. Bank of Meridian v. Stephens, 19 C. A. 560 (47 S. W. 832). Writ of error refused.
- First Natl. Bank of Montague v. Robertson, 3 C. A. 150 (22 S. W. 100; 24 Id. 659). Application dismissed. 85 T. 578.

- First Natl. Bank of Muscogee v. Campbell, 58 S. W. 628.
Writ of error refused.
- Fishback v. Page, 17 C. A. 183 (43 S. W. 317). Writ of error refused.
- Fisher v. Ullman, 3 C. A. 322 (22 S. W. 504). Writ of error refused.
- Fitzgerald v. W. U. Tel. Co., 15 C. A. 143 (40 S. W. 421).
Writ of error refused.
- Fitzwilliams v. Davie, 18 C. A. 81 (43 S. W. 840). Writ of error refused.
- Fleming v. Ball, 1 T. C. R. 769. Application refused. 60 S. W. 985.
- Fleming v. Pringle, 21 C. A. 225 (51 S. W. 553). Writ of error refused.
- Fleming v. Stansell, 13 C. A. 558 (36 S. W. 504). Writ of error refused.
- Fleming v. Texas Loan Agency, 28 S. W. 388. Certified questions. 87 T. 238 (27 S. W. 126).
- Fletcher v. Gates, 1 T. C. R. 633. Application refused. 63 S. W. 937.
- Fleury v. Butler (see Morgan v. Butler).
- Flewellen v. Cochran, 19 C. A. 499 (48 S. W. 39). Writ of error refused.
- Flint v. Travelers Ins. Co., 43 S. W. 1079. Writ of error refused.
- Flores v. Railway, 1 T. C. R. 151. Application refused.
- Focke v. Wilkens & Lange v. Buchanan, 1 T. C. R. 142. Application refused. 59 S. W. 820.
- Folts v. Ferguson, 24 S. W. 657. Writ of error refused.
- Ford v. Ford, 22 C. A. 453 (54 S. W. 773). Writ of error refused.
- Ford v. Fosgard, 25 S. W. 445. Writ of error granted. Reversed and rendered. 87 T. 185 (27 S. W. 57).
- Ford v. Sims (see Sims v. Ford).
- Fordyce v. Du Bose, 26 S. W. 998. Certified questions. 87 T. 78 (26 S. W. 1050).
- Forestall v. Bocock, 41 S. W. 502. Writ of error refused.
- Forke v. Homan, 14 C. A. 670 (39 S. W. 210). Writ of error refused.
- Forrest v. Durnell, 26 S. W. —. Certified questions. 86 T. 647 (26 S. W. 481).
- Forsgard v. League, 45 S. W. 173. Writ of error refused.

- Fortune v. Killebrew, 21 S. W. 986. Writ of error granted. Reversed and remanded. 86 T. 172 (23 S. W. 976).
- Fort Worth Comp. Co. v. Chi. R. I. & T. Ry. Co., 18 C. A. 622 (45 S. W. 967). Writ of error refused.
- Fort Worth & D. C. Ry. Co. v. Bunrock, 46 S. W. 70. Writ of error refused.
- Fort Worth & D. C. Ry. Co. v. Cushman, 92 T. 623 (50 S. W. 1009). Certified questions.
- Fort Worth & D. C. Ry. Co. v. Daggett, 27 S. W. 186. Writ of error granted. Reversed and remanded. 87 T. 322 (28 S. W. 525).
- Fort Worth & D. C. Ry. Co. v. Jenkins, 29 S. W. 1113. Writ of error refused.
- Fort Worth & D. C. Ry. Co. v. Johnson, 5 C. A. 15, 24 (26 S. W. 921). Writ of error refused.
- Fort Worth & D. C. Ry. Co. v. Martin, 12 C. A. 464 (35 S. W. 21). Writ of error refused.
- Fort Worth & D. C. Ry. Co. v. Morrison, 93 T. 527 (56 S. W. 745). Certified questions. 56 S. W. (C. A.) 931.
- Fort Worth & D. C. Ry. Co. v. Moses, 41 S. W. 154. Writ of error refused (see *Moses v. Union Pac. Ry. Co.*).
- Fort Worth & D. C. Ry. Co. v. Peters, 25 S. W. 1077. Writ of error granted. Affirmed. 87 T. 222 (27 S. W. 257).
- Fort Worth & D. C. Ry. Co. v. Rogers, 1 T. C. R. 29. Application refused. 60 S. W. 61.
- Fort Worth & D. C. Ry. Co. v. Shetter, 59 S. W. 533. Certified questions.
- Fort Worth & D. C. Ry. Co. v. Sugarman, 41 S. W. 1103. Writ of error refused.
- Fort Worth v. Thompson, 2 C. A. 170 (21 S. W. 137). Writ of error refused.
- Fort Worth & D. C. Ry. Co. v. Whitehead, 6 C. A. 595 (26 S. W. 172). Writ of error refused.
- Fort Worth & D. C. Ry. Co. v. Wilson, 3 C. A. 583 (24 S. W. 686). Writ of error granted. Reversed and remanded. 85 T. 516 (22 S. W. 578).
- Fort Worth & D. C. Ry. Co. v. Word, 32 S. W. 14. Writ of error refused. 88 T. 661.
- Fort Worth & D. C. Ry. Co. v. Wrenn, 20 C. A. 628 (50 S. W. 210). Writ of error refused.
- Fort Worth & N. O. Ry. Co. v. Enos, 50 S. W. 595. Writ of error granted. Affirmed. 92 T. 577.

- Fort Worth & N. O. Ry. Co. v. Nesmith, 40 S. W. 1071.
Writ of error refused.
- Fort Worth & R. G. Ry. Co. v. Daniels, 29 S. W. 695. Writ
of error refused.
- Fort Worth & R. G. Ry. Co. v. Kime, 21 C. A. 271 (51 S.
W. 558). Writ of error granted. Affirmed. 54 S. W.
240.
- Fort Worth & R. G. Ry. Co. v. Lindsay, 11 C. A. 245 (32
S. W. 714). Writ of error refused.
- Fort Worth & R. G. Ry. Co. v. Neeley, 1 T. C. R. 385. Dis-
missed. 60 S. W. 282.
- Fort Worth & R. G. Ry. Co. v. White, 51 S. W. 855. Writ of
error refused.
- Fort Worth St. Ry. Co. v. Allen, 39 S. W. 125. Writ of error
refused.
- Fort Worth St. Ry. Co. v. Ferguson, 29 S. W. 61. Writ of
error refused.
- Fossett v. McMahan, 26 S. W. 998. Certified questions. 86
T. 652 (26 S. W. 979).
- Foster v. N. Y. & Texas Ld. Co., 2 C. A. 505 (22 S. W. 260).
Writ of error refused.
- Foster v. Eoff, 19 C. A. 405 (47 S. W. 399). Writ of error
refused.
- Fouke v. Brengle, 51 S. W. 519. Writ of error refused.
- Foust v. Sanger, 13 C. A. 410 (35 S. W. 404). Writ of
error refused.
- Fowler v. Bell, 35 S. W. 822. Writ of error granted. Re-
versed and rendered. 90 T. 150 (37 S. W. 1058).
- France-Texan Ld. Co. v. McCormick, 23 S. W. 118. Writ of
error granted. Reversed and remanded. 85 T. 416 (23
S. W. 123).
- Frank v. Tatum, 23 S. W. 311; see 20 Id. 869; 21 Id. 716;
26 Id. 900. Writ of error granted. Reversed and re-
manded. 87 T. 204 (25 S. W. 409).
- Frank v. Zigmond, 22 C. A. 161 (54 S. W. 271). Writ of
error refused.
- Frank Co. v. Berwind, 47 S. W. 681. Writ of error re-
fused.
- Franke v. Loan Star Brew Co., 17 C. A. 9 (42 S. W. 861).
Writ of error refused.
- French v. Groesbeck, 8 C. A. 19 (27 S. W. 43). Writ of
error refused.

- French v. Koenig, 8 C. A. 341 (27 S. W. 1079). Writ of error refused.
- Freeman v. McAninch, 6 C. A. 644 (24 S. W. 922). Writ of error granted. Reversed and remanded. 87 T. 132 (27 S. W. 97).
- Frey v. Ft. W. & R. G. Ry. Co., 6 C. A. 29 (24 S. W. 950). Writ of error refused. 86 T. 465.
- Freiberg v. De Lamar, 7 C. A. 263 (27 S. W. 151). Writ of error refused.
- Freidman v. Dockery, 34 S. W. 766. Application dismissed.
- Frost v. Mason, 17 C. A. 465 (44 S. W. 53). Writ of error refused.
- Fuller v. East Texas Ld. & I. Co., 23 S. W. 571. Writ of error refused.
- Fulton v. Natl. Bank, 1 T. C. R. 355. Application refused. 62 S. W. 84.
- Fuqua v. Pabst Brewing Co., 36 S. W. 479. Writ of error granted. Reversed and rendered. 90 T. 298, 303 (38 S. W. 29, 750).
- Gabert v. Olcott, 22 S. W. 286. Writ of error granted. Reversed and judgment of district court affirmed. 86 T. 121 (23 S. W. 985).
- Gaines v. Newbrough, 12 C. A. 466 (34 S. W. 1048). Writ of error refused.
- Gainesville H. & W. Ry. Co. v. Lacy, 26 S. W. 413. Writ of error granted. Affirmed. 86 T. 244.
- Galbraith v. Howard, 11 C. A. 230 (32 S. W. 803). Writ of error refused.
- Gallagher v. Keller, 4 C. A. 454 (30 S. W. 248). Writ of error refused.
- Gallagher v. Keller, 23 S. W. 296. Certified questions. 30 S. W. 248. 87 T. 472.
- Gallagher v. Rahn, 31 S. W. 327. Application dismissed. 88 T. 514 (32 S. W. 523).
- Galloway v. Kerr, 1 T. C. R. 345. Application granted. 63 S. W. 180.
- Galloway v. State Natl. Bank, 56 S. W. 236. Writ of error refused.
- Galveston City St. Ry. Co. v. Tompkins Co., 26 S. W. 774. Writ of error refused (see 23 S. W. 25).

- Galveston City v. Ducie, 45 S. W. —. Certified questions. 91 T. 665 (45 S. W. 798).
- Galveston & H. Inv. Co. v. Grymes, 50 S. W. 467. Writ of error granted.
- Galveston, H. & H. Ry. Co. v. Bohan, 47 S. W. 1050. Writ of error refused.
- Galveston, H. & H. Ry. Co. v. Burnett, 37 S. W. 779. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Adams, 55 S. W. 803. Writ of error granted. Affirmed. 58 S. W. 831.
- Galveston, H. & S. A. Ry. Co. v. Arispe, 5 C. A. 611 (23 S. W. 928). Writ of error refused. (34 S. W. 33.)
- Galveston, H. & S. A. Ry. Co. v. Armstrong, 43 S. W. 614. Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 117 (46 S. W. 33).
- Galveston H. & F. Ry. Co. v. Baudat, 21 C. A. 236 (51 S. W. 541). Writ of error refused.
- Galveston H. & S. A. Ry. Co. v. Bernard, 57 S. W. 686. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Bonnet, 38 S. W. 813. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Briggs, 30 S. W. 933. Writ of error refused (see 23 S. W. 503).
- Galveston, H. & S. A. Ry. Co. v. Brown, 1 T. C. R. 223. Application granted. 59 S. W. 930. Reversed. 63 S. W. 305.
- Galveston, H. & S. A. Ry. Co. v. Clark, 51 S. W. 276. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Cody, 20 C. A. 520 (50 S. W. 135). Writ of error refused. 92 T. 632.
- Galveston, H. & S. A. Ry. Co. v. Collins, 57 S. W. 884. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Cooper, 2 C. A. 42 (20 S. W. 990). Writ of error refused. 85 T. 431 (21 S. W. 678).
- Galveston, H. & S. A. Ry. Co. v. Crawford, 9 C. A. 245 (29 S. W. 958; 27 S. W. 822). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Croskill, 6 C. A. 160 (25 S. W. 486). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Davis, 45 S. W. 956. Writ of error granted. Reversed and remanded. 92 T. 372.

- Galveston, H. & S. A. Ry. Co. v. Davis, 22 C. A. 335 (54 S. W. 909). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Downey, 28 S. W. 109. Application dismissed.
- Galveston, H. & S. A. Ry. Co. v. Duelm, 23 S. W. 596; 24 Id. 334. Writ of error granted. Affirmed. 86 T. 450 (25 S. W. 406).
- Galveston, H. & S. A. Ry. Co. v. Eaton, 44 S. W. 562. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Eckols, 7 C. A. 429 (26 S. W. 1117). Application dismissed.
- Galveston, H. & S. A. Ry. Co. v. Eckles (Echols), 54 S. W. 651. Application dismissed.
- Galveston, H. & S. A. Ry. Co. v. Eckles, 1 T. C. R. 669. Application refused. 60 S. W. 830.
- Galveston, H. & S. A. Ry. Co. v. Eitzen, 39 S. W. 625. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Ford, 22 C. A. 131 (54 S. W. 37). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Garteiser, 9 C. A. 456 (29 S. W. 939). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Goodwin, 32 S. W. 785. Writ of error refused. 26 S. W. 1007.
- Galveston, H. & S. A. Ry. Co. v. Gordon, 54 S. W. 635. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Gormley, 27 S. W. 1051; 42 S. W. 314. Writ of error granted. Reversed and remanded. 91 T. 393 (35 S. W. 488; 43 S. W. 877).
- Galveston, H. & S. A. Ry. Co. v. Grymes, 60 S. W. 467. Affirmed. 63 S. W. 860.
- Galveston, H. & S. A. Ry. Co. v. Henning, 39 S. W. 302. Writ of error granted. Affirmed. 90 T. 656 (40 S. W. 392).
- Galveston, H. & S. A. Ry. Co. v. Huebner, 42 S. W. 1021. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Hughes, 22 C. A. 134 (54 S. W. 264). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Hynes, 21 C. A. 34 (50 S. W. 624). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Jackson, 53 S. W. 81. Writ of error granted. Affirmed. 93 T. 262.

- Galveston, H. & S. A. Ry. Co. v. Johnson, 50 S. W. 1012.
Certified questions. 92 T. 591.
- Galveston, H. & S. A. Ry. Co. v. Johnson, 58 S. W. 622.
Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Kieff, 58 S. W. 625. Re-
versed. 60 S. W. 543.
- Galveston, H. & S. A. Ry. Co. v. Leonard, 29 S. W. 955. Writ
of error refused.
- Galveston, H. & S. A. Ry. Co. v. Lester, 1 T. C. R. 247. Ap-
plication refused. 59 S. W. 946.
- Galveston, H. & S. A. Ry. Co. v. Lynch, 22 C. A. 336 (55 S.
W. 389). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. McCray, 43 S. W. 275.
Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Masterson, 51 S. W. 1091.
Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Michalke, 14 C. A. 495 (37
S. W. 480). Writ of error refused. 90 T. 276.
- Galveston, H. & S. A. Ry. Co. v. Miller, 57 S. W. 702. Writ
of error refused. (No written opinion).
- Galveston, H. & S. A. Ry. Co. v. Morris, 1 T. C. R. 458. Ap-
plication granted. Affirmed. 61 S. W. 700.
- Galveston, H. & S. A. Ry. Co. v. Nass, 57 S. W. 910. Affirm-
ed. 59 S. W. 870.
- Galveston, H. & S. A. Ry. Co. v. Nicholson, 57 S. W. 693.
Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Norris, 29 S. W. 950. Writ
of error refused. 27 S. W. 822.
- Galveston, H. & S. A. Ry. Co. v. Parrish, 43 S. W. 536. Writ
of error refused.
- Galveston, H. & S. A. Ry. Co. v. Parsley, 6 C. A. 150 (25 S.
W. 64). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Patterson, 47 S. W. 686.
Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Pitts, 42 S. W. 255. Writ
of error refused.
- Galveston, H. & S. A. Ry. Co. v. Robinett, 54 S. W. 263.
Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Scott, 21 C. A. 24 (50 S. W.
477). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Slinkard, 27 C. A. 585 (44
S. W. 35). Writ of error refused.

- Galveston, H. & S. A. Ry. Co. v. Smith, 9 C. A. 450 (28 S. W. 110). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Smith, 57 S. W. 999. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. State, 40 S. W. 1099. Writ of error refused (see 36 S. W. 111).
- Galveston, H. & S. A. Ry. Co. v. Sweeny, 14 C. A. 216 (36 S. W. 800). Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Templeton, 25 S. W. 135. Writ of error granted. Affirmed. 87 T. 42 (26 S. W. 1066).
- Galveston, H. & S. A. Ry. Co. v. Waldo, 32 S. W. 783. Writ of error refused. 26 S. W. 1004.
- Galveston, H. & S. A. Ry. Co. v. Washington, 63 S. W. 534. Certified questions. 63 S. W. (C. A.) 538.
- Galveston, H. & S. A. Ry. Co. v. Wesch, 21 S. W. 62, 313, 1014. Writ of error granted. Reversed and remanded. 85 T. 593 (22 S. W. 957).
- Galveston, H. & S. A. Ry. Co. v. White, 32 S. W. 186. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Williams, 1 T. C. R. 424. Application refused. 62 S. W. 808.
- Galveston, H. & S. A. Ry. Co. v. Worthy, 27 S. W. 426. Writ of error granted. Reversed and remanded. 87 T. 459 (29 S. W. 376).
- Galveston, H. & S. A. Ry. Co. v. Worthy, 32 S. W. 557. Writ of error refused.
- Galveston, H. & S. A. Ry. Co. v. Zantzinger, 49 S. W. 677. Writ of error granted. Affirmed. 93 T. 64 (48 S. W. 563); 92 T. 365.
- Galveston & W. Ry. Co. v. City of Galveston, 37 S. W. 27. Writ of error granted. Reversed and dismissed. 90 T. 398; 91 T. 17.
- Galveston & W. Ry. Co. v. Lacy, 26 S. W. 413. Affirmed. 86 T. 244 (24 S. W. 269).
- Gamble v. Butchee, 31 S. W. 318. Certified questions. 87 T. 643 (30 S. W. 861).
- Gans Bros. v. Marx, 1 T. C. R. 115. Application refused. 61 S. W. 527.
- Garcia v. Sanders, 35 S. W. 52. Writ of error granted. Reversed and remanded, 90 T. 103 (37 S. W. 314).

- Gardner v. Griffith**, 93 T. 355 (55 S. W. 314). Certified questions. 56 S. W. (C. A.) 558.
- Garmany v. City of Gainesville**, 41 S. W. 730. Application dismissed.
- Garrett v. Cochran** (see **Flewellen v. Cochran**). 48 S. W. 39. Writ of error refused.
- Garrett v. Parker**, 39 S. W. 147. Writ of error refused.
- Garrison v. Ferguson's Est.**, 54 S. W. 247. Writ of error refused.
- Garza v. Hammon & Ulrich**, 39 S. W. 610. Writ of error refused.
- Gass v. Sanger**, 30 S. W. 502. Writ of error refused.
- Gate City Natl. Bank v. Levy** (see **Levy v. Williams**).
- Gates v. Hooper**, 39 S. W. 186. Writ of error granted. Reversed and remanded. 90 T. 563 (39 S. W. 1079).
- Gautier v. McHenry**, 15 C. A. 332 (39 S. W. 603). Writ of error refused.
- Gay Ranch Co. v. Pemberton**, 57 S. W. 71. Writ of error refused.
- Geers v. Scott**, 33 S. W. 587. Writ of error refused.
- Geisberg v. Mutual Bldg. & Loan Ass'n**, 1 T. C. R. 240. Application refused.
- Gemblem v. Echterhoff**, 57 S. W. 313. Writ of error refused.
- George v. Lyons** (see **Lyons v. George**).
- George v. Ryon**, 60 S. W. 427. Certified questions. 59 S. W. (C. A.) 825.
- Georgia Home Ins. Co. v. Brady**, 41 S. W. 513. Writ of error refused.
- Georgia Home Ins. Co. v. Moriarty**, 37 S. W. 628. Writ of error refused.
- German Ins. Co. v. Evants**, 1 T. C. R. 110. Application refused. 61 S. W. 536; 62 S. W. 417.
- German Ins. Co. v. Everett**, 18 C. A. 514 (46 S. W. 95). Writ of error refused.
- German Ins. Co. v. Jansen**, 18 C. A. 190 (45 S. W. 220). Writ of error refused.
- German Ins. Co. v. Pearlstone**, 18 C. A. 706 (45 S. W. 832). Writ of error refused.
- Germania Bldg. & Loan Ass'n v. Orr** (opinion of May 8, 1897, unpublished). Writ of error refused.
- Germania Life Ins. Co. v. Peetz**, 47 S. W. 687. Writ of error refused.

- Gibbs v. Jones, 46 S. W. 73. Writ of error refused.
- Gibbs v. Petree, 7 C. A. 526 (27 S. W. 685). Writ of error refused.
- Gibbons v. Hall, 1 T. C. R. 180 (59 S. W. 814). Application refused.
- Gibson v. Lancaster, 40 S. W. 1102. Certified questions. 90 T. 540 (39 S. W. 1078).
- Gibson v. Shelby County, 44 S. W. 302. Writ of error refused.
- Gilbough v. Stahl Bldg. Co., 41 S. W. 535. Certified questions. 91 T. 621 (45 S. W. 385).
- Giles v. Stanton, 24 S. W. 556. Writ of error granted. Reversed and remanded. 86 T. 620 (26 S. W. 615, 1050).
- Gill v. Bickel, 10 C. A. 67 (30 S. W. 919). Writ of error refused.
- Gill v. Everman, 59 S. W. 531. Certified questions. 60 S. W. (C. A.) 913.
- Gillespie v. Crawford, 42 S. W. 621. Writ of error refused.
- Gilmer v. Wells, 17 C. A. 436 (43 S. W. 1058). Writ of error refused.
- Gilley v. Williams, 43 S. W. 1094. Writ of error refused.
- Gimbel v. Comprecht, 36 S. W. 781. Certified questions. 89 T. 497 (35 S. W. 470).
- Girand v. Barnard, 47 S. W. 482. Application dismissed.
- Girard v. Moore, 24 S. W. 652. Certified questions. Affirmed. 86 T. 675 (26 S. W. 945).
- Gist v. East, 16 C. A. 274 (41 S. W. 396). Writ of error granted. Reformed and affirmed. Miller v. Gist. 91 T. 335 (43 S. W. 263).
- Glasscock v. Price, 45 S. W. 415. Writ of error granted. Reformed and affirmed. 92 T. 271.
- Glasscock v. Stringer, 32 S. W. 920; 33 Id. 677. Writ of error refused.
- Gleghorn v. Smith, 1 T. C. R. 660. Application refused. 62 S. W. 1096.
- Glenn v. Southern H. B. & L. Ass'n. Writ of error refused May 3, 1900.
- Glover v. Storrie, 18 C. A. 6. (43 S. W. 1035). Writ of error refused.
- Godair v. Tiller, 47 S. W. 533. Writ of error refused.
- Gonzales v. Adoue, 56 S. W. 543. Writ of error granted. Reversed. 58 S. W. 951.

- Gooch v. Addison, 13 C. A. 76 (35 S. W. 83). Writ of error refused.
- Gordon v. Thorp, 53 S. W. 357. Writ of error refused.
- Grabfelter v. Lockett, 26 S. W. 168. Writ of error refused.
- Grace v. City of Bonham, 1 T. C. R. 698. Application refused. 63 S. W. 158.
- Graham v. Billings, 51 S. W. 645. Application dismissed.
- Graham v. Miller, 24 S. W. 1107. Application dismissed.
- Grandjean v. City of San Antonio, 38 S. W. 837. Writ of error granted. Reversed and judgment of district court affirmed. 91 T. 430 (41 S. W. 477; 44 S. W. 466).
- Granberry v. Krueger, 33 S. W. 663. Writ of error refused.
- Grand Lodge A. O. U. W. v. Bollman, 22 C. A. 106 (53 S. W. 829). Writ of error refused.
- Grand Lodge A. O. U. W. v. Cleghorn, 42 S. W. 1043. Writ of error refused.
- Grand Lodge v. Stumpf, 1 T. C. R. 54. Application refused. 58 S. W. 840.
- Grant v. Hill, 44 S. W. 1027. Writ of error refused. 29 S. W. 247.
- Grant v. Searcy, 35 S. W. 861. Writ of error granted. Reversed and judgment of district court affirmed. 90 T. 97.
- Graves v. Hillyer, 48 S. W. 889. Writ of error refused.
- Graves v. Horn, 33 S. W. 303. Writ of error refused. 89 T. 77 (33 S. W. 332).
- Graves v. T. & N. O. Ry. Co., 31 S. W. 87. Writ of error refused.
- Gray v. Dallas Terminal Ry. & U. D. Co., 13 C. A. 158 (36 S. W. 352). Writ of error refused.
- Gray v. State ex rel. Langham, 49 S. W. 217. Certified questions. 92 T. 396; 19 C. A. 521 (49 S. W. 699).
- Gray v. Wickes, 39 S. W. 318. Writ of error refused.
- Grayson v. Lofland, 21 C. A. 503 (52 S. W. 121). Writ of error refused.
- Green v. Edwards, 15 C. A. 382 (39 S. W. 1005). Writ of error refused.
- Green v. Southard, 59 S. W. 839. Reversed. 61 S. W. 705.
- Green v. White, 18 C. A. 509 (45 S. W. 389). Writ of error refused.
- Greenville Oil & Cotton Co. v. Harkey, 20 C. A. 225 (48 S. W. 1005). Writ of error refused.

- Greer v. Bringhurst, 56 S. W. 947. Writ of error refused.
(No written opinion).
- Greer M. & Co. v. First Natl. Bank of M. F., 47 S. W. 1045.
Writ of error refused.
- Greer, Mills & Co. v. Riley (oral opinion). Writ of error
granted. Reversed and remanded. 92 T. 699.
- Gregory v. Gulf & Interstate Ry. Co., 21 C. A. 598 (54 S. W.
617). Application dismissed.
- Gresham v. Harcourt, 50 S. W. 1058. Writ of error granted.
Reversed and remanded. 93 T. 149.
- Gresham v. Welsh, 41 S. W. 667. Writ of error refused.
- Griffis v. Payne (no published opinion). Writ of error
granted. Reversed and remanded. 92 T. 293.
- Griffis v. Payne, 22 C. A. 519 (55 S. W. 757). Writ of error
refused.
- Grigsby Legatees in re Estate of Narcissa Willis, 1 T. C. R.
205. Application refused. 59 S. W. 574.
- Grinnan v. Rousseaux, 20 C. A. 19 (48 S. W. 58, 781). Writ
of error refused.
- Groos v. Brewster, 55 S. W. 590. Writ of error refused.
- Guerra v. City of San Antonio, 1 C. A. 422 (20 S. W. 935).
Writ of error refused.
- Guerguin v. City of San Antonio, 19 C. A. 98 (50 S. W. 140).
Writ of error refused.
- Guinn v. Musick, 41 S. W. 723. Writ of error refused.
- Guinn v. O'Daniel, 22 S. W. 754. Certified questions. 23
S. W. 850 (Nalle v. City of Austin, 22 S. W. 668 fol.
85 T. 563; 22 S. W. 876).
- Gulf & B. V. Ry. Co. v. Barnett, 55 S. W. 986. Writ of er-
ror refused.
- Gulf City Trust Co. v. Hartley, 20 C. A. 180 (49 S. W. 902).
Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Austin, 31 S. W. 255. Writ of
error refused.
- Gulf, C. & S. F. Ry. Co. v. Beall, 43 S. W. 605. Certified
questions. 91 T. 310 (42 S. W. 1054).
- Gulf, C. & S. F. Ry. Co. v. Bell, 1 T. C. R. 62. Application
refused. 93 T. 632 (58 S. W. 614; 57 S. W. 939).
- Gulf, C. & S. F. Ry. Co. v. Brown, 16 C. A. 93 (40 S. W.
608). Application dismissed.
- Gulf, C. & S. F. Ry. Co. v. Buford, 2 C. A. 115 (21 S. W.
272). Application dismissed. 85 T. 430 (21 S. W. 678).
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- Gulf, C. & S. F. Ry. Co. v. Burleson, 26 S. W. 1107. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Calvert, 11 C. A. 297 (32 S. W. 246; 31 S. W. 679). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Cannon, 29 S. W. 689. Writ of error granted. Reversed and remanded. 88 T. 312 (32 S. W. 342; 31 S. W. 498).
- Gulf, C. & S. F. Ry. Co. v. Cole, 8 C. A. 635 (28 S. W. 391). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Conder, 58 S. W. 58. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Creeland, 26 S. W. 153. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Cunningham, 30 S. W. 367. Writ of error refused. 26 S. W. 474.
- Gulf, C. & S. F. Ry. Co. v. Cusenberry, 5 C. A. 114 (23 S. W. 851; 26 S. W. 43). Writ of error granted. Reversed and rendered. 86 T. 525.
- Gulf, C. & S. F. Ry. Co. v. Day, 22 S. W. 772. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Delaney, 22 C. A. 427 (55 S. W. 538). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Dowman, 28 S. W. 922. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Dunlap, 26 S. W. 655. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Dunman, 33 S. W. 1024; 35 Id. 947. Writ of error refused. 31 S. W. 1070.
- Gulf, C. & S. F. Ry. Co. v. Duvall, 35 S. W. 699. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Edloff, 34 S. W. 410. Writ of error granted. Affirmed. 89 T. 454 (34 S. W. 414; 35 S. W. 144).
- Gulf, C. & S. F. Ry. Co. v. Elliott, 26 S. W. 636. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Ellis, 21 S. W. 933. Affirmed. 87 T. 19 (26 S. W. 985). Reversed by Supreme Court, United States. 165 U. S. 150 (26 S. W. 985).
- Gulf, C. & S. F. Ry. Co. v. Ft. W. & R. G. Ry. Co., 26 S. W. 54. Writ of error granted. Affirmed. 86 T. 537.

- Gulf, C. & S. F. Ry. Co. v. Foster, 44 S. W. 198. Writ of error granted. Reversed and judgment of district court affirmed. 91 T. 631 (45 S. W. 376).
- Gulf, C. & S. F. Ry. Co. v. Fowler, 12 C. A. 683 (34 S. W. 661). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Gill, 5 C. A. 496 (23 S. W. 142). Writ of error granted. Affirmed. 86 T. 284 (24 S. W. 502).
- Gulf, C. & S. F. Ry. Co. v. Glenk, 30 S. W. 278. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Gray, 24 S. W. 837. Writ of error granted. Reversed and dismissed. 87 T. 312.
- Gulf, C. & S. F. Ry. Co. v. Gray, 1 T. C. R. 742. Application refused. 63 S. W. 927.
- Gulf, C. & S. F. Ry. Co. v. Hayter (no published opinion). Writ of error granted. Affirmed. 93 T. 239.
- Gulf, C. & S. F. Ry. Co. v. Higby, 26 S. W. 737. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Hill, 58 S. W. 255. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Hockaday, 14 C. A. 613 (37 S. W. 475). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Hodge, 39 S. W. 986. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Hume Bros., 6 C. A. 653 (24 S. W. 915). Writ of error granted. Reversed and remanded. 87 T. 211 (27 S. W. 110; 30 S. W. 803).
- Gulf, C. & S. F. Ry. Co. v. Jagoe, 32 S. W. 717. Writ of error refused. 40 S. W. 187.
- Gulf, C. & S. F. Ry. Co. v. Jagoe, 32 S. W. 1061. Writ of error refused. 40 S. W. 1102.
- Gulf, C. & S. F. Ry. Co. v. John, 9 C. A. 342 (29 S. W. 558). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Johnson, 10 C. A. 254 (31 S. W. 255). Writ of error refused. 20 S. W. 1123.
- Gulf, C. & S. F. Ry. Co. v. Johnson, 42 S. W. 584; 43 Id. 583. Writ of error granted. Reversed and remanded. 91 T. 569 (44 S. W. 1067).
- Gulf, C. & S. F. Ry. Co. v. Johnson, 51 S. W. 531. Writ of error granted. 92 T. 591 (50 S. W. 563).

- Gulf, C. & S. F. Ry. Co. v. Killebrew, 20 S. W. 1005. Writ of error granted. Reversed and remanded. 20 S. W. 182.
- Gulf, C. & S. F. Ry. Co. v. Kizziah, 22 S. W. 110; 26 Id. 242. Writ of error granted. Reversed and remanded. 86 T. 81 (23 S. W. 578; 22 S. W. 300).
- Gulf, C. & S. F. Ry. Co. v. Knox, 1 T. C. R. 292. Application refused. 61 S. W. 969.
- Gulf, C. & S. F. Ry. Co. v. Lankford, 29 S. W. 933. Writ of error granted. Affirmed. 88 T. 499 (31 S. W. 355).
- Gulf, C. & S. F. Ry. Co. v. McCown, 26 S. W. 745. Writ of error refused. 25 S. W. 435.
- Gulf, C. & S. F. Ry. Co. v. McMahan, 6 C. A. 601 (26 S. W. 159). Writ of error refused. 20 S. W. 954.
- Gulf C. & S. F. Ry. Co. v. Marchand, 57 S. W. 860. Writ of error refused. (No written opinion).
- Gulf, C. & S. F. Ry. Co. v. Milam County, 38 S. W. —. Certified questions. 90 T. 355 (38 S. W. 747).
- Gulf, C. & S. F. Ry. Co. v. Moody, 39 S. W. 987. Writ of error refused (see 30 S. W. 574; 22 S. W. 1009).
- Gulf, C. & S. F. Ry. Co. v. Moorman, 46 S. W. 662. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Nicholson, 25 S. W. 54. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Oakes, 58 S. W. 999. Certified questions.
- Gulf, C. & S. F. Ry. Co. v. Pendery, 27 S. W. 213. Writ of error granted. Reversed and remanded. 87 T. 553 (29 S. W. 1038).
- Gulf, C. & S. F. Ry. Co. v. Pendrey, 14 C. A. 60 (36 S. W. 793). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Perry, 30 S. W. 709. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Peters, 30 S. W. 490. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Phillips (see W. U. Tel. Co. v. Phillips).
- Gulf, C. & S. F. Ry. Co. v. Pierce, 25 S. W. 1052. Writ of error granted. Affirmed. 87 T. 144 (27 S. W. 60).
- Gulf, C. & S. F. Ry. Co. v. Powell, 1 T. C. R. 750. Application refused. 60 S. W. 979.

- Gulf, C. & S. F. Ry. Co. v. Ramey, 23 S. W. 442: 24 Id. 654. Application dismissed. 86 T. 455 (25 S. W. 406).
- Gulf, C. & S. F. Ry. Co. v. Rather, 3 C. A. 72 (21 S. W. 951). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Reagan, 34 S. W. 796. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Riordan, 22 S. W. 514, 519. Application dismissed. 85 T. 511; 86 T. 233 (24 S. W. 393).
- Gulf, C. & S. F. Ry. Co. v. Rowland, 35 S. W. 31. Writ of error granted. Reversed and remanded. 90 T. 365, 371 (38 S. W. 756).
- Gulf, C. & S. F. Ry. Co. v. Royall, 18 C. A. 86 (43 S. W. 815). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. St. John, 13 C. A. 257 (35 S. W. 501). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Schawe, 22 T. 509 (55 S. W. 357). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Schriver, 22 S. W. 656. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Shearer, 1 C. A. 343 (21 S. W. 133). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Sheider, 26 S. W. 509. Writ of error granted. Affirmed. 88 T. 152 (30 S. W. 902).
- Gulf, C. & S. F. Ry. Co. v. Shields, 9 C. A. 652 (28 S. W. 709; 29 Id. 652). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Short, 51 S. W. 261. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Simmons, 28 S. W. 825. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Slater, 22 C. A. 583 (56 S. W. 216). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Smith, 26 S. W. 644. Writ of error granted. Reversed and remanded. 87 T. 348 (28 S. W. 520).
- Gulf, C. & S. F. Ry. Co. v. Smith, 30 S. W. 361. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Spence, 32 S. W. 329. Application dismissed.
- Gulf, C. & S. F. Ry. Co. v. Stanley, 29 S. W. 806. Writ of error granted. Affirmed. 89 T. 42 (33 S. W. 109).

- Gulf, C. & S. F. Ry. Co. v. Steele, 26 S. W. 926. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Trott, 25 S. W. 431. Certified questions. 86 T. 412 (25 S. W. 419).
- Gulf, C. & S. F. Ry. Co. v. Wagley, 15 C. A. 308 (40 S. W. 538). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Ward, 34 S. W. 328. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Warner, 22 C. A. 167 (54 S. W. 1064). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Warner, 35 S. W. —. Certified questions. 89 T. 475 (36 S. W. 118; 35 S. W. 364).
- Gulf, C. & S. F. Ry. Co. v. West, 36 S. W. 101; see 37 Id. 1133. Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Wilson, 1 T. C. R. 135. Dismissed. 59 S. W. 589; 60 S. W. 480.
- Gulf, C. & S. F. Ry. Co. v. Winton, 7 C. A. 57 (26 S. W. 770). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Wooten, 10 C. A. 54 (30 S. W. 684). Application dismissed.
- Gulf, C. & S. F. Ry. Co. v. Wright, 10 C. A. 179 (30 S. W. W. 294 (21 S. W. 399)). Writ of error refused.
- Gulf, C. & S. F. Ry. Co. v. Young, 29 S. W. 948. Certified questions. 90 T. 387 (40 S. W. 423; 45 S. W. 1030; 38 S. W. 1121).
- Gulf & I. S. Ry. Co. v. T. & N. O. Ry. Co., 54 S. W. 1031. Writ of error granted. Affirmed and rendered. 93 T. 482.
- Gulf, W. T. & P. Ry. Co. v. Goldman, 8 C. A. 257 (28 S. W. 267). Writ of error refused. 87 T. 567.
- Gulf, W. T. & P. Ry. Co. v. Letsch, 55 S. W. 584. Writ of error granted. Affirmed. 56 S. W. 1134.
- Gulf & W. Ry. Co. v. Kinkhead, 1 T. C. R. 262. Application refused. 60 S. W. 468.
- Gunn v. Wynne, 43 S. W. 290. Writ of error refused.
- Gurley v. Clarkson, 30 S. W. 360. Writ of error refused.
- Haas v. G. H. & S. A. Ry. Co., 57 S. W. 855. Writ of error refused. (No written opinion).
- Hahn v. Goings, 22 C. A. 576 (56 S. W. 217). Application dismissed.
- Halbert v. Bennett, 26 S. W. 913. Writ of error refused.

- Halbert v. Brown, 9 C. A. 335 (31 S. W. 535). Writ of error refused.
- Halbert v. Hendrix, 26 S. W. 911. Writ of error refused.
- Halbert v. San Saba Springs L. & L. Ass'n, 34 S. W. 636. Certified questions. 89 T. 230 (34 S. W. 639).
- Haldeman v. McDonald, 1 T. C. R. 31. Application refused. 58 S. W. 1040.
- Hale v. Hollon, 35 S. W. 843. Writ of error granted. Affirmed. 90 T. 427 (36 S. W. 288; 39 S. W. 287).
- Half & Bro. v. Goldfrank, 49 S. W. 1095. Writ of error refused.
- Half & Bro. v. O'Connor, 14 C. A. 191 (37 S. W. 238). Writ of error refused.
- Half & Bro. v. Wangemann, 54 S. W. 937. Writ of error refused.
- Hall v. Hargadine M. D. G. Co., 55 S. W. 747; 56 Id. 432. Writ of error refused.
- Hall v. LaSalle County, 11 C. A. 379 (32 S. W. 433). Writ of error refused.
- Hall v. LaSalle County, 46 S. W. 862. Application dismissed.
- Hall v. White, 59 S. W. 810. Affirmed. 61 S. W. 385.
- Halsell v. McMurphy, 21 S. W. 777. Writ of error granted. Affirmed. 86 T. 100 (23 S. W. 647).
- Halsell v. Wise County Coal Co., 19 C. A. 560 (47 S. W. 1017). Writ of error refused.
- Halsey v. Jones, 25 S. W. 697. Writ of error granted. Reformed and affirmed. 86 T. 488 (25 S. W. 696).
- Ham v. Dallas, etc., Packing Co. (no written opinion). Application dismissed.
- Hambel v. Davis, 33 S. W. 251. Writ of error refused. 89 T. 256 (34 S. W. 439).
- Hamilton Brown Shoe Co. v. Lewis, 7 C. A. 509 (28 S. W. 101). Writ of error refused.
- Hamilton v. San Antonio Found. Co., 51 S. W. 1104. Writ of error refused.
- Hammond v. Allen, 15 C. A. 267. Writ of error refused.
- Hammond v. Atlee, 39 S. W. 600. Writ of error refused.
- Hammond v. Martin, 15 C. A. 570 (40 S. W. 347). Writ of error refused.
- Hammond v. Tarver, 11 C. A. 48 (31 S. W. 841). Writ of error refused. 89 T. 290 (32 S. W. 511; 34 S. W. 729).

- Hammond Co. v. Eggleston (opinion of March 27, 1897, unpublished). Petition for writ of error dismissed.
- Hanlon v. Wheeler, 45 S. W. 821. Writ of error refused.
- Hanna v. Hanna, 10 C. A. 97 (30 S. W. 820). Writ of error refused.
- Hanner v. Caudle, 49 S. W. 411. Writ of error refused.
- Hanner v. Summerhill, 6 C. A. 764; 7 C. A. 235 (26 S. W. 906). Writ of error refused.
- Hanover Fire Ins. Co. v. Natl. Exch. Bank, 34 S. W. 333. Writ of error refused.
- Hanover Fire Ins. Co. v. Shrader, 31 S. W. 1100. Writ of error refused. 89 T. 35 (32 S. W. 344, 872; 33 S. W. 112).
- Hanrick v. Gurley, 48 S. W. 994. Writ of error granted. Reformed and affirmed in part. Reversed and remanded in part. 93 T. 458.
- Hanrick v. Wheeler, 49 S. W. 414. Application dismissed.
- Hanway v. G. H. & S. A. Ry. Co., 57 S. W. 695. Application dismissed. 58 S. W. 724.
- Harbison v. Harbison, 56 S. W. 1006. Writ of error refused. (No written opinion).
- Hardy v. Brown, 46 S. W. 385. Writ of error refused.
- Hardeman County v. Foard County, 19 C. A. 212 (47 S. W. 30, 536). Writ of error refused.
- Hargadine-McKittrick D. G. Co. v. First Natl. Bank of Jonesboro, 14 C. A. 416 (37 S. W. 622). Writ of error refused. 90 T. 76 (37 S. W. 311).
- Hargrave v. Telegraph Co., 1 T. C. R. 740. Application refused. 60 S. W. 687.
- Harkness v. Hutcherson, 38 S. W. —. Certified questions 90 T. 383 (38 S. W. 1120).
- Harling v. Creech, 31 S. W. 1084. Certified questions. 88 T. 300 (31 S. W. 357).
- Harmon v. Landers, 41 S. W. 378. Writ of error refused.
- Harrington v. Blankenship & Co., 52 T. 585. Writ of error refused.
- Harrington v. Claffin & Co., 42 S. W. 1055. Writ of error granted. Reversed and remanded. 91 T. 294.
- Harrington v. Edrington, 38 S. W. 246. Writ of error refused.
- Harrington v. McFarland, 1 C. A. 298 (21 S. W. 116). Writ of error refused.

- Harris v. Brower, 3 C. A. 649 (22 S. W. 758). Writ of error refused.
- Harris v. City of Houston, 1 T. C. R. 284. Application refused. 59 S. W. 579.
- Harris v. Dunn, 45 S. W. 731. Writ of error refused.
- Harris v. First Natl. Bank of Springfield, 45 S. W. 311. Writ of error refused.
- Harris v. Hicks, 49 S. W. 110. Writ of error refused.
- Harris v. Masterson, 42 S. W. 1151. Certified questions. 41 S. W. 482.
- Harris v. Shafer, 21 S. W. 110. Writ of error granted. Reversed and judgment of district court affirmed. 86 T. 314, 317 (23 S. W. 979; 24 S. W. 263).
- Harris v. Simmang, 29 S. W. 668. Writ of error refused.
- Harris v. Von Rosenberg, 26 S. W. 308. Writ of error refused.
- Harris v. Wilson, 40 S. W. 868. Writ of error granted. Affirmed. 91 T. 427.
- Harris County v. Stewart, 43 S. W. 52. Certified questions. 91 T. 133 (41 S. W. 650).
- Harrison v. Waterberry, 27 S. W. 430. Writ of error granted. Reversed and remanded. 27 S. W. 109.
- Harrold v. Warren, 46 S. W. 657. Writ of error granted. Reversed and remanded. 92 T. 417.
- Hart v. West, 16 C. A. 395 (41 S. W. 183). Writ of error granted. Affirmed. 91 T. 184 (42 S. W. 544).
- Hart v. Wynne, 40 S. W. 848. Writ of error refused.
- Hartford Fire Ins. Co. v. McLemore, 26 S. W. 928. Application dismissed.
- Hartford Fire Ins. Co. v. Moore, 13 C. A. 644 (36 S. W. 146). Writ of error refused.
- Hartford Fire Ins. Co. v. Shook, 35 S. W. 737. Writ of error refused.
- Hartford Fire Ins. Co. v. Walker 60 S. W. 820. 1 T. C. R. 604. Application granted. Reversed. 61 S. W. 711.
- Hartford Fire Ins. Co. v. Watt, 39 S. W. 200. Writ of error refused.
- Hartman v. Huntington, 11 C. A. 130 (32 S. W. 562). Writ of error refused.
- Harvey v. Sutton, 1 T. C. R. 542. Application refused. 63 S. W. 1134. See 58 S. W. 833.

- Hasseldenz v. Dofflemeyre, 45 S. W. 830. Writ of error refused.
- Hastings v. O'Connor, 52 S. W. 567. Writ of error refused.
- Hatcher v. Stipe, 45 S. W. 329. Writ of error refused.
- Hathaway v. Texas Bldg. & Loan Ass'n, 19 C. A. 240 (45 S. W. 1023). Writ of error refused.
- Haverman v. Ft. W. & R. G. Ry. Co., 20 C. A. 610 (50 S. W. 155). Writ of error refused.
- Hawes v. Parrish, 41 S. W. 132. Application dismissed.
- Hawkes v. Robertson, 40 S. W. 548. Writ of error refused.
- Hawkins v. Wells, 17 C. A. 360 (43 S. W. 816). Writ of error refused.
- Hawley v. Brooks, 39 S. W. 316. Writ of error refused.
- Hayden v. Amarillo Natl. Bank (oral opinion). Application dismissed.
- Hayden v. McMillan, 23 S. W. 430. Writ of error refused.
- Hayden Saddlery Hdw. Co. v. Ramsey, 14 C. A. 185 (36 S. W. 595). Writ of error refused.
- Hayes v. Anderson, 31 S. W. 313. Writ of error refused.
- Hayes v. Cavil, 31 S. W. 313. Writ of error refused.
- Hayes v. Gallaher, 21 C. A. 88 (46 S. W. 77). Writ of error refused.
- Haynie v. McAnally, 27 S. W. 431. Writ of error refused.
- Hays v. Perkins, 22 C. A. 198 (54 S. W. 1071). Writ of error refused.
- Hays v. Tilson, 35 S. W. 515. Application dismissed. 45 S. W. 479.
- Hays v. Tilson, 18 C. A. 610 (45 S. W. 479). Writ of error refused.
- Heatherly v. Little, 40 S. W. 445. Writ of error refused. 41 S. W. 79.
- Hedgecoxe v. Connor, 43 S. W. 322. Writ of error refused.
- Heidenheimer v. Tannenbaum, 56 S. W. 776. Writ of error refused.
- Heinze v. Marx, 4 C. A. 599 (23 S. W. 704). Writ of error refused.
- Heintz v. Thayer, 50 S. W. 175. Writ of error granted. Reversed and remanded. 92 T. 658.
- Heller v. Weishuhn (oral opinion). Writ of error refused May 10, 1900.
- Hemphill v. T. & P. Ry. Co., 46 S. W. 874. Writ of error refused.

- Henderson v. Allbright, 12 C. A. 368 (34 S. W. 992). Application dismissed.
- Henderson v. Brown, 16 C. A. 464 (41 S. W. 406). Writ of error refused.
- Henderson v. G. H. & S. A. Ry. Co., 42 S. W. 1030. Writ of error refused.
- Henderson v. Stith, 43 S. W. 566. Writ of error refused.
- Hendricks v. Huffmeyer, 38 S. W. 523. Writ of error granted. Affirmed. 90 T. 577 (27 S. W. 777).
- Hendrix v. Gracey, 50 S. W. 137. Writ of error granted. Reversed. 93 T. 26.
- Henrietta Natl. Bank v. Barrett, 25 S. W. 456. Writ of error refused.
- Henson v. Byrne, 41 S. W. 494. Certified questions. 91 T. 625 (45 S. W. 382).
- Hereford Cattle Co. v. Powell, 36 S. W. 1033. Writ of error refused.
- Hermann v. Likins, 37 S. W. 981. Writ of error granted. Reversed and remanded. 90 T. 448 (39 S. W. 282).
- Herndon v. Campbell, 23 S. W. 558. Certified questions. Reversed. 86 T. 168 (23 S. W. 980).
- Herndon v. Burnett, 21 C. A. 25 (50 S. W. 581). Writ of error refused.
- Herndon v. Vick, 33 S. W. 1011. Writ of error granted. Reversed and remanded. 89 T. 469 (35 S. W. 141).
- Herndon v. Vick, 18 C. A. 583 (45 S. W. 852). Application dismissed.
- Herring-Hall-Marvin Co. v. Bexar County, Garnishee, 16 C. A. 673 (40 S. W. 145). Writ of error refused.
- Herring-Hall-Marvin Co. v. Hroeger, 57 S. W. 980. Writ of error refused.
- Herring v. Herring, 51 S. W. 865. Writ of error refused.
- Herring v. Mason, 17 C. A. 559 (43 S. W. 797). Writ of error refused.
- Hibernia Ins. Co. v. Bills (no published opinion). Writ of error granted. Reversed and judgment of district court affirmed. 87 T. 547.
- Hickman v. G. C. & S. F. Ry. Co., 58 S. W. 1134. Writ of error refused. (No written opinion).
- Hickman v. Hoffman, 11 C. A. 605 (33 S. W. 257). Writ of error refused.

- Higgins v. Bordages, 28 S. W. 350. Writ of error granted. Reversed and rendered. 88 T. 458.
- High v. I. & G. N. Ry. Co., 55 S. W. 526. Writ of error refused.
- Hill County v. Atchison, 19 C. A. 664 (49 S. W. 141). Application dismissed.
- Hill v. Conrad, 41 S. W. 541. Writ of error granted. Reversed and remanded. 91 T. 341 (43 S. W. 789).
- Hill v. Jackson, 51 S. W. 357. Writ of error refused.
- Hill v. Roach, 1 T. C. R. 624. Application refused. 62 S. W. 959.
- Hilliard v. White, 31 S. W. 553. Writ of error refused. See 88 T. 591 (32 S. W. 525).
- Hillsboro Oil Co. v. White, 54 S. W. 432. Writ of error refused.
- Hinton v. Cameron (see Cameron v. Hinton).
- Hinzie v. Moody, 13 C. A. 193 (35 S. W. 832). Writ of error refused (see 20 S. W. 769).
- Hinzie v. Robinson, 21 C. A. 9 (50 S. W. 635). Writ of error refused.
- Hirshfield v. Brown, 30 S. W. 962. Writ of error refused.
- Hirshfield v. Howard, 1 T. C. R. 77, 720. Application refused. 59 S. W. 55.
- Hitchler v. Boyles, 21 C. A. 230 (51 S. W. 648). Writ of error refused.
- Hitchler v. Scanlan, 15 C. A. 40 (39 S. W. 633). Writ of error refused.
- Hodges v. Robbins, 56 S. W. 565. Writ of error refused.
- Hodges v. Reynolds, 37 S. W. 45. Writ of error refused.
- Hodges v. Ross, 25 S. W. 975. Writ of error refused.
- Hodo v. Mex. Natl. Ry. Co., 31 S. W. 708. Application dismissed. 88 T. 523 (32 S. W. 511).
- Hoeffling v. Beitel (see Beitel v. Dobbin).
- Hoeffling v. City of San Antonio, 38 S. W. 1127. Writ of error refused. 90 T. 511 (39 S. W. 918).
- Hoeffling v. Dobbin, 40 S. W. 58. Writ of error granted. Reversed and remanded. 91 T. 210, 215 (42 S. W. 541; 43 S. W. 262).
- Hoeffling v. Esser's Estate, 46 S. W. 294. Writ of error refused.
- Hoffman v. Cleburne Bldg. & Loan Ass'n, 22 S. W. 155. Certified questions. 85 T. 409 (22 S. W. 154).

- Hogue v. Williamson**, 22 S. W. 762. Writ of error granted. Reversed. 85 T. 553 (22 S. W. 580).
- Hogsett v. Mansfield** (opinion unpublished). Writ of error refused.
- Holland v. Preston**, 34 S. W. 975. Writ of error refused. 41 S. W. 374.
- Hollon v. Carpenter**, 51 S. W. 1134. Writ of error refused.
- Hollon v. Hale**, 21 C. A. 194 (51 S. W. 900). Writ of error refused.
- Holloway Seed Co. v. City Natl. Bank**, 47 S. W. 77. Writ of error granted. Reversed and remanded. 92 T. 187.
- Holman v. G. A. Stowers Fur. Co.**, 30 S. W. 1120. Writ of error refused.
- Holt v. Maverick**, 5 C. A. 650 (23 S. W. 751; 24 Id. 532). Application dismissed. 86 T. 457 (25 S. W. 607).
- Home F. B. O. of Ill. v. Jones**, 20 C. A. 68 (43 S. W. 219). Writ of error refused.
- Home F. B. O. of Ill. v. Varnado**, 55 S. W. 364. Writ of error refused.
- Homes v. City of Henrietta**, 41 S. W. 728. Application dismissed. 91 T. 318 (46 S. W. 871; 42 S. W. 1052).
- Hood v. Peoples B. & S. Ass'n**, 8 C. A. 385 (27 S. W. 1046). Writ of error refused.
- Hooks v. Scottish-American Mtg. Co.**, 57 S. W. 685. Writ of error refused. (No written opinion).
- Hoopes v. East**, 48 S. W. 764. Writ of error refused.
- Hopkins v. Gregory** (memorandum opinion, unpublished). Writ of error refused.
- Hopkins v. Halliburton**, 6 C. A. 451 (25 S. W. 1005). Writ of error refused.
- Hord v. Owens**, 20 C. A. 21 (48 S. W. 200). Writ of error refused.
- Houghton & Robinson v. Rice**, 15 C. A. 561 (40 S. W. 349, 1057). Writ of error refused.
- House v. Am. Surety Co.**, 54 S. W. 303. Writ of error refused.
- House v. Houston Waterworks Co.**, 22 S. W. 277. Writ of error granted. Affirmed. 88 T. 233 (31 S. W. 139).
- House v. Kountze Bros.**, 17 C. A. 402 (43 S. W. 561). Writ of error refused.
- House v. Reavis**, 34 S. W. 646. Writ of error granted. Reversed and rendered. 89 T. 626 (35 S. W. 1063).

- House v. Robertson*, 34 S. W. 640. Writ of error granted. Reversed and rendered. 89 T. 681 (36 S. W. 251).
- House v. Schulz*, 21 C. A. 243; 52 S. W. 654. Writ of error refused.
- House of Mercy v. Davidson*. Certified questions. 90 T. 529 (39 S. W. 924).
- Houston v. Pond Eng. Co.*, 28 S. W. 405. Writ of error granted. Reversed and remanded. 88 T. 489.
- Houston City St. Ry. Co. v. Medlenka*, 17 C. A. 621 (43 S. W. 1028). Writ of error refused.
- Houston City St. Ry. Co. v. Reichart*, 27 S. W. 918, 920. Writ of error granted. Reversed and remanded. 87 T. 539.
- Houston City St. Ry. Co. v. Storrie*, 44 S. W. 693. Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 129.
- Houston City St. Ry. Co. v. Woodlock*, 29 S. W. 817. Writ of error refused.
- Houston Cemetery Co. v. Drew*, 13 C. A. 536 (36 S. W. 802). Application dismissed.
- Houston D. Nav. Co. v. Ins. Co. of N. A.*, 31 S. W. 560, 685. Writ of error granted. Reversed and remanded. 89 T. 1 (32 S. W. 889).
- Houston Printing Co. v. Dement*, 18 C. A. 30 (44 S. W. 558). Writ of error refused.
- Houston Printing Co. v. Moulden*, 15 C. A. 574 (41 S. W. 381). Writ of error refused.
- Houston, E. & W. T. Ry. Co. v. Campbell*, 40 S. W. 431. Writ of error granted. Reversed and remanded. 91 T. 551 (45 S. W. 2).
- Houston, E. & W. T. Ry. Co. v. Keller*, 36 S. W. 859. Writ of error granted. Reversed and rendered. 90 T. 214 (see 28 S. W. 724; 37 S. W. 1062).
- Houston, E. & W. T. Ry. Co. v. Perkins*, 21 C. A. 508 (52 S. W. 124). Writ of error refused.
- Houston, E. & W. T. Ry. Co. v. Peters*, 15 C. A. 515 (40 S. W. 429). Writ of error refused.
- Houston, E. & W. T. Ry. Co. v. Powell*, 41 S. W. 695. Application dismissed.
- Houston, E. & W. T. Ry. Co. v. Runnels*, 46 S. W. 394. Writ of error granted. Reversed and remanded. 92 T. 305.
- Houston, E. & W. T. Ry. Co. v. Summers*, 49 S. W. 1106. Writ of error granted. Affirmed. 92 T. 621.

- Houston & T. C. Ry. Co. v. Bath, 17 C. A. 697 (44 S. W. 595). Writ of error refused.
- Houston & T. C. Ry. Co. v. Berling, 14 C. A. 544 (37 S. W. 1083). Writ of error refused.
- Houston & T. C. Ry. Co. v. Blan, 1 T. C. R. 443. Application refused. 62 S. W. 552.
- Houston & T. C. Ry. Co. v. Byrd, 1 T. C. R. 523. Application refused. 61 S. W. 147.
- Houston & T. C. Ry. Co. v. Carter, 24 S. W. 1102. Writ of error refused.
- Houston & T. C. Ry. Co. v. Crawford, 32 S. W. 155. Writ of error granted. Reversed and rendered. 89 T. 89 (31 S. W. 176; 33 S. W. 534).
- Houston & T. C. Ry. Co. v. Davis, 11 C. A. 24 (31 S. W. 308; 32 Id. 163; 32 S. W. 510). Writ of error refused. 88 T. 593.
- Houston & T. C. Ry. Co. v. Dotson, 15 C. A. 73 (38 S. W. 642). Writ of error refused.
- Houston & T. C. Ry. Co. v. Dunn, 17 C. A. 687 (42 S. W. 250). Writ of error refused.
- Houston & T. C. Ry. Co. v. Ennis-Calvert Comp. Co., 56 S. W. 367. Writ of error refused.
- Houston & T. C. Ry. Co. v. Ferris (no published opinion). Application dismissed.
- Houston & T. C. Ry. Co. v. Gaither, 43 S. W. 266. Writ of error refused. 35 S. W. 179.
- Houston & T. C. Ry. Co. v. Grigsby, 13 C. A. 639 (35 S. W. 815; 36 S. W. 496). Writ of error refused.
- Houston & T. C. Ry. Co. v. Guisar, 29 S. W. 946. Writ of error refused. 27 S. W. 1045.
- Houston & T. C. Ry. Co. v. Harvin, 45 S. W. 629. Writ of error refused.
- Houston & T. C. Ry. Co. v. Higgins, 22 C. A. 430 (55 S. W. 744). Writ of error refused.
- Houston & T. C. Ry. Co. v. Kelley, 13 C. A. 1 (34 S. W. 809). Writ of error refused. 27 S. W. 806; 35 S. W. 878.
- Houston & T. C. Ry. Co. v. Kelley, 13 C. A. 1 (35 S. W. 878). Writ of error refused.
- Houston & T. C. Ry. Co. v. Laskowski, 47 S. W. 59. Writ of error refused.

- Houston & T. C. Ry. Co. v. Lipscomb, 1 T. C. R. 584. Application granted. 62 S. W. 954.
- Houston & T. C. Ry. Co. v. Loeffler, 1 T. C. R. 313. Dismissed. 59 S. W. 558.
- Houston & T. C. Ry. Co. v. Loeffler, 51 S. W. 536. Application dismissed.
- Houston & T. C. Ry. Co. v. Martin, 21 C. A. 207 (51 S. W. 641). Writ of error refused.
- Houston & T. C. Ry. Co. v. McCarty, 60 S. W. 429. Certified questions. 62 S. W. (C. A.) 106.
- Houston & T. C. Ry. Co. v. McCullough, 22 C. A. 208 (55 S. W. 392). Writ of error refused.
- Houston & T. C. Ry. Co. v. McFadden, 40 S. W. 216. Writ of error granted. Reversed and judgment of district court affirmed. 91 T. 194 (42 S. W. 593).
- Houston & T. C. Ry. Co. v. Milam, 1 T. C. R. 58, 453. Application refused. 58 S. W. 735; 60 S. W. 591.
- Houston & T. C. Ry. Co. v. O'Neal, 45 S. W. 921. Writ of error granted. Reversed and remanded. 91 T. 671.
- Houston & T. C. Ry. Co. v. Pereira, 45 S. W. 767. Writ of error refused.
- Houston & T. C. Ry. Co. v. Poras, 29 S. W. 945. Writ of error refused.
- Houston & T. C. Ry. Co. v. Quill, 55 S. W. 1126. Affirmed and judgment rendered. 93 T. 616.
- Houston & T. C. Ry. Co. v. Red Cross Stock Farm, 43 S. W. 795; 45 S. W. 741. Certified questions. 91 T. 628 (45 S. W. 375).
- Houston & T. C. Ry. Co. v. Ricker, 50 S. W. 1118. Writ of error refused.
- Houston & T. C. Ry. Co. v. Rodican, 15 C. A. 556 (40 S. W. 535). Writ of error refused.
- Houston & T. C. Ry. Co. v. Rowell, 45 S. W. 763. Writ of error granted. Affirmed on remittitur. 92 T. 147 (46 S. W. 630).
- Houston & T. C. Ry. Co. v. Rutherford, 1 T. C. R. 661. Application granted. 62 S. W. 1056.
- Houston & T. C. Ry. Co. v. Shirley, 24 S. W. 809. Writ of error granted. Reversed and remanded. 89 T. 95 (31 S. W. 291).
- Houston & T. C. Ry. Co. v. Smith, 51 S. W. 506. Writ of error refused.

- Houston & T. C. Ry. Co. v. Smith, 38 S. W. 51. Application dismissed. 90 T. 123 (38 S. W. 985).
- Houston & T. C. Ry. Co. v. Smith, 32 S. W. 710; 33 Id. 896. Writ of error refused.
- Houston & T. C. Ry. Co. v. Speake, 51 S. W. 509. Writ of error refused.
- Houston & T. C. Ry. Co. v. State, 36 S. W. 819. Writ of error refused. 90 T. 607 (40 S. W. 402).
- Houston & T. C. Ry. Co. v. State, 40 S. W. 1067. Writ of error refused.
- Houston & T. C. Ry. Co. v. State, 41 S. W. 157. Writ of error refused.
- Houston & T. C. Ry. Co. v. Stewart, 48 S. W. 799. Writ of error granted. Reversed and remanded. 92 T. 540.
- Houston & T. C. Ry. Co. v. Strycharski, 35 S. W. 851. Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 1 (26 S. W. 253, 642; 35 S. W. 851; 37 S. W. 415).
- Houston & T. C. Ry. Co. v. Talley, 15 C. A. 115 (39 S. W. 206). Writ of error refused.
- Houston & T. C. Ry. Co. v. Taylor, 20 C. A. 654 (49 S. W. 1055). Writ of error refused.
- Houston & T. C. Ry. Co. v. Wallace, 21 C. A. 394 (53 S. W. 77). Writ of error refused.
- Houston & T. C. Ry. Co. v. Weaver, 41 S. W. 846. Writ of error refused.
- Houston & T. C. Ry. Co. v. White, 56 S. W. 204. Writ of error refused.
- Houston & T. C. Ry. Co. v. White, 46 S. W. 382. Application dismissed.
- Howard v. Herman, 9 C. A. 79 (29 S. W. 542). Writ of error refused.
- Howard v. Smith (memorandum opinion, unpublished). Writ of error refused. 38 S. W. 15.
- Howe v. O'Brien, 45 S. W. 813. Writ of error refused.
- Howell v. Hanrick, 24 S. W. 823; 25 Id. 41. Writ of error granted. Reversed and remanded. 88 T. 383 (29 S. W. 763; 30 S. W. 856; 88 T. 398; 31 S. W. 611; 88 T. 403).
- Howell v. Stephenson, 36 S. W. 302. Writ of error refused.
- Hoxie, Ex'trx, v. F. & M. Natl. Bank of Ft. W., 20 C. A. 462 (49 S. W. 637). Writ of error refused.

- International & G. N. Ry. Co. v. Anthony, 57 S. W. 897.
Writ of error refused.
- International & G. N. Ry. Co. v. Barton, 57 S. W. 292. Writ
of error refused.
- International & G. N. Ry. Co. v. Bender. Certified questions.
87 T. 99 (26 S. W. 1047).
- International & G. N. Ry. Co. v. Best, 93 T. 344 (55 S. W.
315). Certified questions. 55 S. W. (C. A.) 1134.
- International & G. N. Ry. Co. v. Bibolet, 57 S. W. 974. Writ
of error refused.
- International & G. N. Ry. Co. v. Brooks, 54 S. W. 1056. Writ
of error refused.
- International & G. N. Ry. Co. v. Bryant, 54 S. W. 364. Writ
of error refused.
- International & G. N. Ry. Co. v. Cook, 16 C. A. 386 (41 S.
W. 665). Writ of error refused.
- International & G. N. Ry. Co. v. Coolidge, 1 T. C. R. 340.
Application granted. 62 S. W. 1097.
- International & G. N. Ry. Co. v. Cooper, 30 S. W. 470. Writ
of error granted. Reversed and remanded. 88 T. 607
(32 S. W. 517).
- International & G. N. Ry. Co. v. Crook, 56 S. W. 1005. Writ
of error refused.
- International & G. N. Ry. Co. v. Culpepper, 19 C. A. 182 (46
S. W. 922). Writ of error refused.
- International & G. N. Ry. Co. v. Dalwigh, 56 S. W. 136. Writ
of error refused.
- International & G. N. Ry. Co. v. Dalwigh, 48 S. W. 527. Writ
of error granted. Reversed and remanded. 92 T. 655.
- International & G. N. Ry. Co. v. Davis, 17 C. A. 340 (43 S.
W. 540). Writ of error refused.
- International & G. N. Ry. Co. v. Davis, 29 S. W. 483. Writ
of error refused.
- International & G. N. Ry. Co. v. De Bajligethy, 9 C. A. 108
(28 S. W. 829). Writ of error refused.
- International & G. N. Ry. Co. v. Douglas, 7 C. A. 554 (27 S.
W. 973). Writ of error refused. 87 T. 297 (28 S. W.
271).
- International & G. N. Ry. Co. v. Downing, 16 C. A. 643 (41
S. W. 190). Writ of error refused.
- International & G. N. Ry. Co. v. Elkins, 54 S. W. 931. Writ
of error refused.

- International & G. N. Ry. Co. v. Emery, 14 C. A. 551 (40 S. W. 149). Writ of error refused.
- International & G. N. Ry. Co. v. Fisher, 28 S. W. 398. Writ of error refused.
- International & G. N. Ry. Co. v. Foltz, 3 C. A. 644 (22 S. W. 541). Application dismissed.
- International & G. N. Ry. Co. v. Gilmer, 18 C. A. 680 (45 S. W. 1028). Writ of error refused.
- International & G. N. Ry. Co. v. Gourley, 54 S. W. 307. Writ of error refused.
- International & G. N. Ry. Co. v. Hawes, 54 S. W. 325. Writ of error refused.
- International & G. N. Ry. Co. v. Herndon, 11 C. A. 465 (33 S. W. 377). Writ of error refused.
- International & G. N. Ry. Co. v. Jackson, 1 T. C. R. 841. Application refused.
- International & G. N. Ry. Co. v. Johnson, 55 S. W. 772. Writ of error granted. Reversed and dismissed by agreement.
- International & G. N. Ry. Co. v. Jones, 1 T. C. R. 757. Application refused. 60 S. W. 978.
- International & G. N. Ry. Co. v. Knight, 52 S. W. 640. Writ of error refused.
- International & G. N. Ry. Co. v. Knight, 45 S. W. 167. Writ of error granted. Reversed and remanded. 91 T. 660 (45 S. W. 556).
- International & G. N. Ry. Co. v. Lee, 34 S. W. 160. Writ of error granted. Reversed and remanded. 89 T. 583 (36 S. W. 63).
- International & G. N. Ry. Co. v. McIver & Bro., 40 S. W. 438. Writ of error refused.
- International & G. N. Ry. Co. v. McNeal, 29 S. W. 1133. Writ of error refused.
- International & G. N. Ry. Co. v. Martinez, 57 S. W. 689. Writ of error refused.
- International & G. N. Ry. Co. v. Miller, 9 C. A. 104 (28 S. W. 233). Writ of error refused. 87 T. 430 (29 S. W. 235).
- International & G. N. Ry. Co. v. Mitchell, 1 T. C. R. 430. Application refused. 60 S. W. 996.
- International & G. N. Ry. Co. v. Moore, 32 S. W. 379. Application dismissed.

- International & G. N. Ry. Co. v. Mulliken, 10 C. A. 663 (32 S. W. 152). Writ of error refused.
- International & G. N. Ry. Co. v. Neff, 26 S. W. 784. Writ of error granted. Reversed and remanded. 87 T. 303 (28 S. W. 283).
- International & G. N. Ry. Co. v. Newman, 40 S. W. 854. Writ of error refused.
- International & G. N. Ry. Co. v. Newman, 58 S. W. 542. Affirmed. 60 S. W. 429.
- International & G. N. Ry. v. Poe, 1 T. C. R. 503. Application refused. 62 S. W. 1071.
- International & G. N. Ry. Co. v. Satterwhite, 15 C. A. 102 (38 S. W. 401). Application dismissed.
- International & G. N. Ry. Co. v. Satterwhite, 19 C. A. 170 (47 S. W. 41). Writ of error refused.
- International & G. N. Ry. Co. v. Sein, 26 S. W. 788. Writ of error granted. Reversed and remanded. 87 T. 310 (28 S. W. 286; 33 S. W. 215). 89 T. 63.
- International & G. N. Ry. Co. v. Sein, 11 C. A. 386 (33 S. W. 558). Writ of error refused.
- International & G. N. Ry. Co. v. Sipole, 29 S. W. 686. Writ of error refused.
- International & G. N. Ry. Co. v. Starling, 16 C. A. 365 (41 S. W. 181). Writ of error refused.
- International & G. N. Ry. Co. v. Stephenson, 22 C. A. 220 (54 S. W. 1086). Writ of error refused.
- International & G. N. Ry. Co. v. Tabor, 12 C. A. 283 (33 S. W. 894). Writ of error refused.
- International & G. W. Ry. Co. v. True, 57 S. W. 977. Writ of error refused.
- International & G. N. Ry. Co. v. Turner, 43 S. W. 560. Writ of error refused. (See 23 S. W. 146; 31 S. W. 518.)
- International & G. N. Ry. Co. v. Welsh, 24 S. W. 854. Certified questions. 86 T. 203 (24 S. W. 390).
- International & G. N. Ry. Co. v. Wentworth, 8 C. A. 5 (27 S. W. 680). Writ of error refused. 87 T. 311.
- International & G. N. Ry. Co. v. Williams, 20 C. A. 587 (50 S. W. 732). Writ of error refused.
- International & G. N. Ry. Co. v. Wing, 34 S. W. 292. Writ of error refused.
- International & G. N. Ry. Co. v. Young, 28 S. W. 819. Writ of error refused.

- International & G. N. Ry. Co. v. Zapp, 49 S. W. 673. Writ of error refused.
- International O. of 12 K. & D. of Tabor v. Boswell, 48 S. W. 1108. Application dismissed.
- Interstate B. & L. Assn. v. Goforth, 57 S. W. 700. Reversed. 59 S. W. 872.
- Inter-State Bldg. & Loan Ass'n v. Tabor, 21 C. A. 112. Writ of error refused.
- Inter-State Natl. Bank v. Stuart & Son, 39 S. W. 963. Writ of error refused.
- Iron City Natl. Bank v. Fifth Natl. Bank, 47 S. W. 533. Writ of error granted. Modified. 92 T. 436 (49 S. W. 368).
- Investors Mtg. Sec. Co. v. Lloyd, 11 C. A. 449 (33 S. W. 750). Writ of error refused.
- Irwin v. Bexar Co., 1 T. R. C. 862. Application refused. 63 S. W. 550.
- Irwin v. Travelers Ins. Co., 16 C. A. 683 (39 S. W. 1097). Writ of error refused.
- Isaacs & Bro. v. So. Kan. Ry. Co., (see So. Kan. Ry. Co. v. Isaacs).
- Island City Sav. Bank v. Dowlearn, 1 T. C. R. 705. Application granted. 59 S. W. 308. Reversed. 60 S. W. 755).
- Ivey v. Bondies, 44 S. W. 916. Writ of error refused.
- Jack v. Dillon, 6 C. A. 192 (25 S. W. 645). Writ of error refused.
- Jack v. El Paso Fuel Co., 38 S. W. 1139. Writ of error refused.
- Jackman v. Fortson, 39 S. W. 215. Writ of error refused.
- Jackson v. Bradshaw, 57 S. W. 878. Writ of error refused.
- Jackson v. Cable, 27 S. W. 201. Application dismissed.
- Jackson v. G. H. & S. A. Ry. Co., 37 S. W. 786. Certificate of dissent. Affirmed. 90 T. 372 (38 S. W. 745).
- Jackson v. Nelson, 39 S. W. 315. Writ of error refused.
- Jackson v. Parrish & Potter (no published opinion). Writ of error refused.
- Jackson v. Swayne, 45 S. W. 619. Writ of error granted. Reversed and dismissed. 92 T. 242.
- Jackson v. Waldstein, 10 C. A. 156 (27 S. W. 26). Writ of error refused.
- Jackson v. Waldstein, 30 S. W. 47. Writ of error refused.

- Jackson v. Wells*, 13 C. A. 275 (35 S. W. 528). Writ of error refused.
- Jackson v. West*, 22 C. A. 483 (54 S. W. 297). Writ of error refused.
- J. A. Kemp Gro. Co. v. Auld*, 34 S. W. 1053. Writ of error refused.
- J. A. Kemp Gro. Co. v. Sawyer*, 11 C. A. 518 (33 S. W. 1031). Writ of error refused.
- Jameson v. Smith*, 19 C. A. 90 (46 S. W. 864). Writ of error refused.
- Janes v. Ferd Hein Brew. Co.*, 44 S. W. 896. Writ of error refused.
- Jarrell v. Sproles*, 20 C. A. 387 (49 S. W. 904). Writ of error refused.
- Jefferies v. Hartel*, 51 S. W. 653. Writ of error granted.
- Jemison v. Scottish Am. Mort. Co.*, 19 C. A. 232 (46 S. W. 886). Writ of error refused.
- Jennings v. Shiner*, 43 S. W. 276. Writ of error refused.
- Jennings v. Willer*, 32 S. W. 24, 375. Writ of error refused.
- Jesse French Piano & Organ Co. v. City*, 1 T. C. R. 260. Application refused. 61 S. W. 942.
- Jeter v. State*. Certified questions. 86 T. 555 (26 S. W. 49).
- John B. Hood Camp Conf. Vets. v. DeCordova*, 47 S. W. 522. Certified questions. 92 T. 202.
- John P. King Mfg. Co. v. Solomon*, 25 S. W. 449. Writ of error refused.
- Johnson v. Amarillo Imp. Co.* (written opinion apparently unpublished). Writ of error granted. Affirmed. 88 T. 505.
- Johnson v. Blum*, 17 C. A. 260 (42 S. W. 791). Writ of error refused.
- Johnson v. Bridges* (memorandum opinion, unpublished). Writ of error dismissed.
- Johnson v. Clarkson*, 29 S. W. 178; 30 Id. 71. Application dismissed.
- Johnson v. Dyer*, 19 C. A. 602 (47 S. W. 727). Writ of error refused.
- Johnson v. Elmen*, 59 S. W. 253. Certified questions.
- Johnson v. Farmer*. Certified questions. 89 T. 610 (35 S. W. 1062).
- Johnson v. Foster*, 34 S. W. 821. Writ of error granted. Reversed and judgment of district court affirmed. 89 T. 640.

- Johnson v. Halley, 8 C. A. 137 (27 S. W. 750). Writ of error refused.
- Johnson v. Hanscom, 37 S. W. 453. Application dismissed. 90 T. 321.
- Johnson v. Holland, 17 C. A. 210 (43 S. W. 71). Writ of error refused.
- Johnson v. International & G. N. Ry. Co., 57 S. W. 869. Writ of error refused.
- Johnson v. Lockhart, 20 C. A. 596 (50 S. W. 955). Writ of error refused.
- Johnson v. Portwood, 34 S. W. 787. Certified questions. 89 T. 235 (34 S. W. 596).
- Johnson v. Simpson, 22 C. A. 290 (54 S. W. 308). Writ of error refused.
- Johnson v. Stratton, 6 C. A. 431 (25 S. W. 683). Writ of error refused.
- Johnson v. Thompson, 92 C. A. 359 (50 S. W. 1055). Writ of error granted. Reversed and remanded. 92 T. 358.
- Johnson v. Travelers Ins. Co., 15 C. A. 314 (39 S. W. 972). Writ of error refused.
- Johnson v. Western U. Tel. Co., 14 C. A. 536 (38 S. W. 64). Writ of error refused.
- Johnson v. White, 27 S. W. 174. Writ of error refused.
- Johnston v. Burroughs (see Burroughs v. Johnston).
- Jones v. Bourbonnais, 1 T. C. R. 738. Application refused. 60 S. W. 989.
- Jones v. Bull, 36 S. W. 501. Writ of error granted. Reversed and remanded. 90 T. 187.
- Jones v. Cole (no written opinion; affirmed on certificate). Writ of error refused.
- Jones v. Doherty, 56 S. W. 596. Writ of error refused.
- Jones v. Erwin, 45 S. W. 39; 46 Id. 1135. Writ of error refused.
- Jones v. Flournoy, 37 S. W. 236. Writ of error refused.
- Jones v. G. H. & S. A. Ry. Co., 11 C. A. 39 (31 S. W. 706). Writ of error refused.
- Jones v. Gibbs, 18 C. A. 626 (46 S. W. 73). Writ of error refused.
- Jones v. Gilchrist, 27 S. W. 890. Writ of error granted. Reversed and remanded. 88 T. 88 (30 S. W. 442).
- Jones v. G. C. & S. F. Ry. Co., 23 S. W. 186. Writ of error refused.

- Kerr v. City of Corsicana, 35 S. W. 694. Writ of error granted. Affirmed. 89 T. 461.
- Kerr v. Hill, 31 S. W. 1089. Writ of error refused.
- Kerr County v. Kitchens, 45 S. W. 152; 47 Id. 551. Writ of error refused.
- Kessler v. First Natl. Bank, 21 C. A. 98 (51 S. W. 62). Application dismissed.
- Kessler v. Halff & Bro., 21 C. A. 91 (51 S. W. 48). Writ of error refused.
- Ketcheson v. So. Pac. Cp., 19 C. A. 288 (46 S. W. 907). Writ of error refused.
- Kettelson & Gegetau v. Groos & Co., 21 C. A. 31 (50 S. W. 591). Writ of error refused.
- Kaim v. Turner, 21 C. A. 417 (52 S. W. 1043). Writ of error refused.
- Kiber v. Boyd (no written opinion). Writ of error refused.
- Kidd v. Reynolds, 20 C. A. 355 (50 S. W. 600). Application dismissed.
- Kildare Lumber Co. v. Atlanta Bank (no published opinion). Writ of error granted. Reversed in part. 91 T. 95 (41 S. W. 64).
- Kilgore v. N. W. Tex. Bapt. Ed. Ass'n, 37 S. W. 473. Writ of error granted. Reversed and remanded. 90 T. 139 (35 S. W. 145; 37 S. W. 598).
- Kimberly v. Morris, 10 C. A. 592 (31 S. W. 809, 808). Writ of error refused. 87 T. 637.
- Kinbrough v. Barnett, 93 T. 301 (55 S. W. 120). Certified questions. 55 S. W. (C. A.) 1134.
- King v. Texas State Fair & Dal. Ex. Ass'n, 34 S. W. 305. Writ of error refused.
- King County L. & L. S. Co. v. Thomson, 21 C. A. 473 (51 S. W. 890). Writ of error refused.
- King Mfg. Co. v. Solomon, 25 S. W. 449. Writ of error refused.
- Kingsbury v. Carothers, 27 S. W. 15. Writ of error refused.
- Kirby v. Estell, 58 S. W. 254. Writ of error refused.
- Kirby v. Natl. L. & I. Co. of Detroit, 22 T. 257 (54 S. W. 1081). Writ of error refused.
- Klopner v. Daggett (no written opinion). Writ of error refused.
- Knight v. Houston & T. C. Ry. Co., 93 T. 417 (55 S. W. 558). Certified questions. 56 S. W. (C. A.) 1134.

- Knittel v. Schmidt**, 16 C. A. 7 (40 S. W. 507). Writ of error refused.
- Knowles v. Ott**, 34 S. W. 295. Writ of error refused.
- Knox v. Earbee**, 35 S. W. 186. Writ of error refused.
- Koehler v. Cochran**, 19 C. A. 196 (47 S. W. 394). Writ of error refused.
- Kolp v. Specht**, 11 C. A. 685 (33 S. W. 714). Writ of error refused.
- Kopplemann v. Kopplemann**, 57 S. W. 571. Certified questions. 59 S. W. (C. A.) 827.
- Kosches v. Liebowitz**, 56 S. W. 613. Application dismissed.
- Kosminsky v. Hamburger Bros.**, 20 C. A. 291 (51 S. W. 53). Application dismissed.
- Kosminsky v. Hamburger Bros.**, 21 C. A. 341. Application dismissed.
- Kosminsky v. Raymont, Hawes & Co.**, 20 C. A. 702 (51 S. W. 51). Application dismissed.
- Kountze Bros. v. Cargill**, 22 S. W. 227. Granted. Reversed and judgment of district court affirmed. 86 T. 386 (22 S. W. 1015; 25 S. W. 13); 86 T. 396.
- Kountze Bros. v. Smith County**, 33 S. W. 908. Granted. Reversed and remanded. 89 T. 556 (36 S. W. 1133).
- Krakauer v. Locke**, 6 C. A. 446 (25 S. W. 700). Writ of error refused.
- Kraus v. Haas**, 6 C. A. 665 (25 S. W. 1025). Writ of error refused. 86 T. 687 (27 S. W. 256).
- Krause v. Spinn**, 21 C. A. 510 (52 S. W. 91). Writ of error refused.
- Kreisle v. Campbell**, 32 S. W. 851. Writ of error refused. 89 T. 104 (33 S. W. 852).
- Kruegel v. Daniels** (no written opinion). Writ of error refused.
- Kruegel v. Jacoby** (no written opinion). Writ of error refused.
- Kruegel v. Nitschman**, 15 C. A. 641 (40 S. W. 68). Writ of error refused.
- Krueger v. Wolf**, 12 C. A. 167 (33 S. W. 663). Writ of error refused.
- Kurtzman v. Blackwell**, 21 C. A. 222 (51 S. W. 659). Writ of error refused.
- Kuhn v. Foster**, 16 C. A. 465 (41 S. W. 716). Writ of error refused.

- Laguereene v. Farrar, 1 T. C. R. 347. Application refused. 61 S. W. 953.
- Laing v. O'Connor, 19 C. A. 455 (48 S. W. 546). Writ of error refused.
- Laing v. State, 9 C. A. 136 (28 S. W. 1040). Writ of error refused.
- Laird v. Roach (see Smith v. Roach).
- Lake v. Boulware, 12 C. A. 660 (35 S. W. 24). Writ of error refused.
- LaMaster v. Dickson, 17 C. A. 473 (43 S. W. 911). Writ of error granted. Affirmed. 91 T. 593.
- Lamb v. James, 27 S. W. 178. Writ of error granted. Reversed and rendered. 87 T. 485 (21 S. W. 172; 29 S. W. 747).
- Lampasas Hotel & Park Co. v. Home Ins. Co., 17 C. A. 615 (43 S. W. 1081). Writ of error refused.
- Lampasas Hotel & Park Co. v. Phoenix Ins. Co., 38 S. W. 361. Writ of error refused.
- Lancaster v. Richardson, 45 S. W. 409. Writ of error refused.
- Lancaster v. Riley, 34 S. W. 320. Writ of error refused.
- Lancaster Gin & C. Co. v. Murray Ginning System Co., 19 C. A. 110 (47 S. W. 387). Writ of error refused.
- Landa v. Obert, 5 C. A. 620 (25 S. W. 343). Writ of error refused.
- Landa v. Shook, 28 S. W. 135. Certified questions. 87 T. 608 (31 S. W. 57; 30 S. W. 536).
- Land-Mortgage Bank v. Quanah Hotel Co., 32 S. W. 573. Writ of error granted. Affirmed. 89 T. 332.
- Lang v. Carothera, 21 C. A. 118. Writ of error refused.
- Lang v. Henke, 22 C. A. 490 (55 S. W. 374). Application dismissed.
- Langham v. Lanier, 7 C. A. 4 (26 S. W. 255). Writ of error refused.
- Langholz v. Kroh, 29 S. W. 831. Application dismissed.
- Lanier v. Blount, 45 S. W. 202. Writ of error refused.
- Lanier v. Davis (written opinion). 1 T. C. R. 572. Application refused. 61 S. W. 385.
- Lanier v. Schwartz, 46 S. W. 380. Writ of error refused.
- Lanier v. Taylor, 41 S. W. 516. Application dismissed.
- Laning v. Iron City Natl. Bank, 37 S. W. 26. Writ of error refused. See 89 T. 601 (36 S. W. 481; 35 S. W. 1048).

- Lanyon v. Edwards, 26 S. W. 546. Writ of error refused.
- La Pice v. Caddenhead, 21 C. A. 363 (53 S. W. 66). Writ of error refused.
- La Pice v. Key (no published opinion). Writ of error granted. Reversed and judgment of district court affirmed. 88 T. 209 (30 S. W. 867).
- Laredo Elec. & Ry. Co. v. Hamilton, 56 S. W. 998. Writ of error refused.
- Lasater v. Purcell, Mill & E. Co., 22 C. A. 33 (54 S. W. 425). Writ of error refused.
- Latham v. Griffin, 42 S. W. 858. Writ of error refused.
- Latimer v. Logwood, 27 S. W. 960. Writ of error refused.
- Laughlin v. Dabney. Certified questions. 86 T. 120 (24 S. W. 259).
- Laughlin v. Fid. Mut. Life Assn., 8 C. A. 448 (28 S. W. 411). Writ of error refused. 87 T. 115 (26 S. W. 1064).
- Laughter v. Laughter, 21 C. A. 414 (52 S. W. 987). Writ of error refused.
- Laux v. Laux, 19 C. A. 693 (50 S. W. 213). Writ of error refused.
- Lawson, Guardian v. Dawson's Est., 21 C. A. 361 (53 S. W. 64). Writ of error refused.
- Layden v. Gillespie (see Gillespie v. Crawford). 42 S. W. 621.
- Leach v. Leach, 11 C. A. 699 (33 S. W. 703). Writ of error refused.
- League v. Henecke, 28 S. W. 220. Writ of error refused. 26 S. W. 729; 27 S. W. 1049.
- League v. State, 56 S. W. 262. Writ of error granted. Affirmed. 93 T. 553 (57 S. W. 34).
- League v. Thorp, 3 C. A. 573 (22 S. W. 179). Writ of error refused. 24 S. W. 685.
- Leary v. Peoples B. L. & S. Assn., 49 S. W. 632. Writ of error granted. Reversed and remanded. 93 T. 1.
- Ledbetter v. Higbee, 13 C. A. 267 (35 S. W. 801). Writ of error refused.
- Ledbetter v. First Natl. Bank of Mason, 31 S. W. 840 (34 S. W. 1042; 42 S. W. 1018). Writ of error refused.
- Lee v. Green, 1 T. C. R. 27 (58 S. W. 847). Application refused.
- Lee v. Michael, 35 S. W. 45. Writ of error refused.

- Lee v. MacFarland, 19 C. A. 292 (46 S. W. 281). Writ of error refused.
- Lee v. T. & N. O. Ry. Co., 22 C. A. 501 (55 S. W. 976). Writ of error refused.
- Leeper v. Donohue, 18 C. A. 431 (45 S. W. 327). Writ of error refused.
- Legate v. Legate, 29 S. W. 212. Certified questions. 87 T. 248 (28 S. W. 281).
- Leland v. Chamberlain, 1 T. C. R. 413. Application granted. 60 S. W. 435-969.
- L. & H. Blum Ld. Co. v. Rogers, 11 C. A. 184 (32 S. W. 713). Writ of error refused.
- Leon County v. Vann. Certified questions. 86 T. 707 (27 S. W. 258).
- Leslie v. McKinney, 38 S. W. 378. Writ of error refused.
- Less v. Ghio, 49 S. W. 635. Writ of error granted. Reversed and remanded. 92 T. 651.
- Levy v. Williams, 20 C. A. 651 (49 S. W. 930; 50 Id. 528). Writ of error refused.
- Lewis v. Alexander, 31 S. W. 414. Writ of error refused.
- Lewis v. Hatton (no published opinion). Writ of error granted. Reversed and remanded. 86 T. 533 (26 S. W. 50).
- Lignoski v. Crooker, 22 S. W. 774. Writ of error granted. Affirmed in part and in part reversed and remanded. 86 T. 324 (24 S. W. 278, 788); 86 T. 328.
- Lillard v. Decatur Cot. Seed Oil Co., 14 C. A. 67 (36 S. W. 792). Writ of error refused.
- Limburger v. Barker, 17 C. A. 602 (43 S. W. 616). Application dismissed.
- Limburger v. San Antonio R. T. St. Ry. Co., 27 S. W. 198. Writ of error granted. Reversed and rendered. 88 T. 79.
- Linares v. Linares, 51 S. W. 510. Writ of error granted. Affirmed. 93 T. 84.
- Linberg v. Finks, 7 C. A. 391 (25 S. W. 789). Writ of error refused.
- Lincoln v. Waddell, 1 T. C. R. 139. Dismissed. 59 S. W. 613.
- Lindley v. Lindley, 92 T. 446 (49 S. W. 573). Certified questions. 50 S. W. 159.
- Lindsey v. Rogers (no written opinion). Writ of error refused.
- Lindsey v. Parks, 17 C. A. 527 (43 S. W. 277). Writ of error refused.
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- Lindsey v. Sparks, 20 C. A. 56 (48 S. W. 204). Writ of error refused.
- Link v. City of Houston, 1 T. C. R. 646. Application granted. 59 S. W. 566. Affirmed. 60 S. W. 660.
- Linz & Bro. v. Atchison, 14 C. A. 647 (38 S. W. 640). Writ of error refused.
- Lion Fire Ins. Co. of Lond. v. Wicker, 54 S. W. 294. Writ of error granted. Affirmed. 93 T. 397.
- Lippencott v. York. Certified questions. 86 T. 276 (24 S. W. 275).
- Lipscombe v. Underwood, 7 C. A. 297 (27 S. W. 155). Writ of error refused.
- Liverpool L. & G. Ins. Co. v. Brown, 33 S. W. 996. Writ of error refused.
- Liverpool L. & G. Ins. Co. v. Ricker, 10 C. A. 264 (31 S. W. 248). Writ of error refused.
- Livingston v. Koenig, 20 C. A. 398 (50 S. W. 463). Writ of error refused.
- Llano Imp. Co. v. Watkins, 4 C. A. 428 (23 S. W. 612). Application dismissed.
- Lochte v. Blum, 10 C. A. 385 (30 S. W. 925). Writ of error refused.
- Lobit v. McClave, 8 C. A. 531 (28 S. W. 726). Writ of error refused.
- Loeb v. Crow, 15 C. A. 537 (40 S. W. 506). Writ of error refused.
- Lombardi v. Shero, 14 C. A. 594 (37 S. W. 613, 971). Writ of error refused.
- Lone Star Leather Co. v. City Natl. Bank, 12 C. A. 128 (34 S. W. 297). Writ of error refused.
- Long v. Behan, 19 C. A. 325 (48 S. W. 555). Writ of error refused.
- Long v. Chicago R. I. & T. Ry. Co. (no published opinion). Writ of error granted. Reversed and remanded June 25, 1900. 57 S. W. 802.
- Long v. Moore, 19 C. A. 363 (48 S. W. 43). Writ of error refused.
- Long Mfg. Co. v. Gray, 13 C. A. 172 (35 S. W. 32). Writ of error refused.
- Longley v. Warren, 11 C. A. 269 (33 S. W. 304). Writ of error refused.

- Looney v. Simpson, 25 S. W. 476. Writ of error granted. Affirmed. 87 T. 109 (26 S. W. 1065).
- Lovenberg v. City of Galveston, 17 C. A. 162 (42 S. W. 1024). Writ of error refused.
- Lowdermilk v. Laughter (see Laughter v. Laughter).
- Lubbock v. Binns, 20 C. A. 407 (50 S. W. 584). Writ of error refused.
- Luck v. Hopkins (no published opinion). Writ of error granted. Reversed and remanded. 92 T. 426.
- Luck v. Hopkins, 54 S. W. 429. Writ of error refused.
- Lumpkin v. Nicholson, 10 C. A. 108 (30 S. W. 568). Writ of error refused.
- Luther v. Telegraph Co., 1 T. C. R. 426. Dismissed. 60 S. W. 1026.
- Luzenberg v. Bexar B. & L. Assn., 9 C. A. 261 (29 S. W. 237). Writ of error refused.
- Lyle v. Horstman, 25 S. W. 802. Writ of error refused.
- Lynch v. Ortleib, 28 S. W. 1017. Writ of error refused. 87 T. 590.
- Lyons v. George (oral opinion). Petition for writ of error dismissed.
- Lyons v. G. H. & S. A. Ry. Co., 10 C. A. 10 (29 S. W. 1107). Writ of error refused.
- Lyons Th. Hdwr. Co. v. Perry Stove Mfg. Co., 27 S. W. 100. Writ of error granted. Affirmed. 88 T. 468 (24 S. W. 16); 86 T. 143.
- Lyons v. Transfer Co., 1 T. C. R. 156. Application refused.
- Lysaght v. Bell (see Bell v. Stewart, 44 S. W. 1049). Writ cation dismissed.
- McAnnally v. Haynie, 17 C. A. 521 (42 S. W. 1049). Writ of error refused.
- McBride v. Fidelity & Cas. Ins. Co., 14 C. A. 280 (37 S. W. 1091). Application dismissed.
- McCammant v. Roberts, 25 S. W. 731. Writ of error granted. Reversed and rendered. 87 T. 241 (27 S. W. 86).
- McCampbell v. Durst, 15 C. A. 522 (40 S. W. 315). Application dismissed. 91 T. 147, 149 (40 S. W. 955; 41 S. W. 470).
- McCardell v. Henry, 57 S. W. 908. Writ of error refused.
- McCartney v. McCartney, 53 S. W. 388. Writ of error granted. Reversed and remanded. 93 T. 359.

- McCarty v. Brackenridge, 1 C. A. 170 (20 S. W. 997). Writ of error refused.
- McCarty v. Merry, 1 T. C. R. 329. Application refused. 59 S. W. 304.
- McClary v. Duckworth, 57 S. W. 317. Writ of error refused.
- McClelland v. McClelland, 37 S. W. 350. Writ of error refused.
- McClure v. Bryant, 18 C. A. 141 (44 S. W. 3). Writ of error refused.
- McClure v. Cochran (see Mohr v. Cochran).
- McCommon v. Lockridge, 37 S. W. 161. Writ of error granted. Reversed and judgment of district court affirmed. 90 T. 234 (38 S. W. 33).
- McConnico v. Thompson, 19 C. A. 539 (47 S. W. 537). Writ of error refused.
- McCord-Collings Co. v. Allen (no written opinion). Writ of error refused.
- McCorkle v. McCorkle, 1 T. C. R. 414. Application refused. 60 S. W. 434.
- McCorkle v. Everett, 16 C. A. 552 (41 S. W. 136). Writ of error refused.
- McCormick v. Blum, 4 C. A. 9 (22 S. W. 1054, 1120). Writ of error refused.
- McCormick v. M., K. & T. Ry. Co., 1 T. C. R. 289. Application refused. 61 S. W. 983.
- McCormick H. M. Co. v. Wesson, 41 S. W. 725; 42 Id. 328. Writ of error refused.
- McCown v. Owens, 15 C. A. 346 (40 S. W. 336). Writ of error refused.
- McCown v. Terrell, 40 S. W. 54. Writ of error granted. Reversed and judgment of district court affirmed. 91 T. 231 (29 S. W. 484, 467; 43 S. W. 2); 87 T. 470.
- McCown v. Terrell, 29 S. W. 484. Application dismissed. 87 T. 470.
- McCray v. Freeman, 17 C. A. 268 (43 S. W. 37). Writ of error refused.
- McCray v. G. H. & S. A. Ry. Co., 32 S. W. 548. Writ of error granted. Reversed and remanded. 89 T. 168 (34 S. W. 95).
- McCreary v. Reliance Lumd. Co., 16 C. A. 45 (41 S. W. 485). Writ of error refused.

- McCreary v. Robinson**, 50 S. W. 476. Application dismissed.
- McCreary v. Robinson**, 92 T. 408 (49 S. W. 212). Certified questions. 57 S. W. 682. Reversed. 59 S. W. 536.
- McCrary v. Lutz**, 1 T. C. R. 382-654. Application granted. 62 S. W. 1094. Affirmed. 64 S. W. 780.
- McCulloch County L. & C. Co. v. Whitefort**, 21 C. A. 314 (50 S. W. 1042). Writ of error refused.
- McCutchen v. Jackson**, 40 S. W. 177. Application dismissed.
- McDonald v. I. & G. N. Ry. Co.**, 20 S. W. 847; 21 Id. 774. Writ of error granted. Reversed and judgment of district court affirmed. 86 T. 1 (see 12 S. W. 860; 22 S. W. 939).
- McDonald v. Miller**, 39 S. W. 89. Writ of error refused. 90 T. 309 (39 S. W. 94).
- McDonnell v. De los Fuentes**, 7 C. A. 136 (26 S. W. 792). Writ of error refused.
- McElroy v. Neece** (see *Mansfield v. Neece*).
- McFadin v. City of San Antonio**, 22 C. A. 140 (54 S. W. 48). Writ of error refused.
- McFarland v. Owens**, 63 S. W. 530. Certified questions.
- McFarlane v. Howell**, 16 C. A. 246 (43 S. W. 315). Writ of error refused. 91 T. 218 (42 S. W. 853).
- McGee v. Franklin Pub. Co.**, 15 C. A. 215 (39 S. W. 335). Writ of error refused.
- McGhee Irrigation Ditch Co. v. Hudson**, 21 S. W. 175. Writ of error granted. Reversed and remanded. 85 T. 587, 591 (22 S. W. 398, 967).
- McGhee v. Romatka**, 18 C. A. 436 (44 S. W. 700). Application dismissed. 92 T. 241 (45 S. W. 552; 47 S. W. 520).
- McGhee v. Romatka**, 19 C. A. 397 (47 S. W. 282, 291). Writ of error refused.
- McGregor v. Sima**, 44 S. W. 1021. Writ of error refused.
- McGregor v. White** (no published opinion). Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 556.
- McHugh v. Gallagher**, 1 C. A. 196 (20 S. W. 1115). Application dismissed. 85 T. 446 (21 S. W. 1033).
- McIlhenny v. P. & M. Natl. Bank**, 46 S. W. 282. Writ of error refused.
- McInnes v. Wallace**, 38 S. W. 816. Writ of error refused.

- McKay v. State** (no written opinion). Application dismissed.
- McKee v. Sims**, 45 S. W. 37. Certified questions. 45 S. W. 564.
- McKeen v. James**, 23 S. W. 460. Writ of error granted. Affirmed. 87 T. 193 (27 S. W. 59; 25 S. W. 408).
- McKinney v. Temple Gro. Co.** (see *Moore & Co. v. Temple Gro. Co.*).
- McKnight v. Carmichael**, 7 C. A. 270 (27 S. W. 150). Application dismissed.
- McLane v. Elder**, 23 S. W. 757. Application dismissed.
- McLane v. Evans**, 57 S. W. 884. Application dismissed. See 58 S. W. 723.
- McLane v. Paschal**, 8 C. A. 398 (28 S. W. 711). Writ of error refused.
- McLaren v. Jones**, 32 S. W. 17. Writ of error granted. Reversed and remanded. 89 T. 131 (33 S. W. 849).
- McLaughlin v. Carter, Ritchie & Co.**, 13 C. A. 694 (37 S. W. 666). Writ of error refused.
- McLeod Art. Well Co. v. Craig**, 43 S. W. 934. Writ of error refused.
- McLennan County v. Graves**, 1 T. C. R. 284. Application granted. 62 S. W. 122.
- McMahon v. City of Sherman**, 1 T. C. R. 257. Dismissed.
- McManus v. Matthews**, 55 S. W. 589. Writ of error refused.
- McMaster v. Childress**, 10 C. A. 92 (30 S. W. 843). Writ of error refused.
- McMickle v. Hardin, Mayor**, 1 T. C. R. 50. Application refused. 61 S. W. 322.
- McMonigal v. State**, 45 S. W. 1038. Writ of error refused.
- McWhiter v. Allen**, 1 C. A. 649 (20 S. W. 1007). Writ of error refused.
- McWhorter v. Northcutt**, 57 S. W. 904. Writ of error refused. See 58 S. W. 720.
- Macmanus v. Orkney**, 39 S. W. 614. Writ of error granted. Reversed and rendered. 91 T. 27.
- Maddox v. Covington**, 29 S. W. 465. Writ of Mandamus refused. 87 T. 454.
- Maddox v. Fort Worth Bldg. Assn.**, 40 S. W. 822. Writ of error refused.
- Maddox v. Summerlin**, 47 S. W. 1020. Writ of error granted. Reversed and remanded. 92 T. 483.

- Masterson v. State**, 17 C. A. 91 (42 S. W. 1003). Writ of error refused.
- Masterson's Heirs v. Stevens**, 37 S. W. 364. Writ of error granted. Reversed and remanded. 90 T. 417 (39 S. W. 292-921); 90 T. 417-425.
- Masterson v. Young**, 48 S. W. 110. Writ of error refused.
- Mateer v. Cockrill**, 18 C. A. 391 (45 S. W. 751). Writ of error refused.
- Mathonican v. Scott**, 29 S. W. 915. Certified questions. 87 T. 396 (38 S. W. 1063).
- Mathews v. Benevides**, 18 C. A. 475 (45 S. W. 31). Writ of error refused.
- Mathews v. Interstate Bldg. & L. Assn.**, 50 S. W. 604. Application dismissed.
- Mathews v. Moses**, 21 C. A. 494 (52 S. W. 113). Writ of error refused.
- Mattfield v. Cotton**, 47 S. W. 549. Application dismissed.
- Matthews v. Boydston**, 31 S. W. 814. Writ of error refused.
- Matthews v. Smelzer**, 26 S. W. 872. Writ of error refused.
- Matthews Lumber Co. v. Hardin** (no opinion in court of civil appeals). Application dismissed. 87 T. 639 (30 S. W. 898).
- Matthews v. Texas B. & L. Assn.**, 48 S. W. 744. Writ of error refused.
- Matula v. Lane**, 22 C. A. 391 (55 S. W. 504). Writ of error refused.
- Maud v. Coppinger**, 56 S. W. 127. Writ of error refused.
- Maughmer v. Behring**, 19 C. A. 299 (46 S. W. 917). Writ of error refused.
- Maurice v. Upton**, 41 S. W. 504. Writ of error refused.
- Maury v. Keller**, 53 S. W. 59. Writ of error refused.
- Maverick v. Burney**, 30 S. W. 566. Writ of error granted. Reversed and remanded. 88 T. 560 (32 S. W. 512).
- Maxson v. Jennings**, 19 C. A. 700 (48 S. W. 781). Writ of error refused.
- Mayer v. Flanagan**, 12 C. A. 405 (34 S. W. 785). Writ of error refused.
- Mayer v. Tennison** (see *Nolan v. Tennison*).
- Mayer, S. O. & Co. v. Templeton**, 53 S. W. 68. Writ of error refused.
- Mayfield v. Robinson**, 22 C. A. 385 (55 S. W. 399). Writ of error refused.

- Mayher v. Manhattan Life Ins. Co., 27 S. W. 124. Writ of error granted. Affirmed. 87 T. 169.
- Mays v. Sanders, 36 S. W. 108. Writ of error granted. Reformed and affirmed. 90 T. 132 (37 S. W. 595).
- Meade v. Bartlett, 1 C. A. 342 (23 S. W. 186). Writ of error refused.
- Meade v. Blum Ld. Co., 22 S. W. 298. Application dismissed. 85 T. 513 (22 S. W. 514).
- Meade v. Boone, 35 S. W. 483. Application dismissed. 90 T. 121 (37 S. W. 598).
- Meade v. Cook, 35 S. W. 483. Application dismissed. 90 T. 121.
- Meade v. Jones, 13 C. A. 320 (35 S. W. 310). Application dismissed. 90 T. 121.
- Meade v. Sandige, 30 S. W. 245. Writ of error refused.
- Meade v. Warring, 35 S. W. 308. Application dismissed. 90 T. 121.
- Mealy v. Lipp, 16 C. A. 163 (40 S. W. 824). Writ of error refused. 91 T. 182.
- Medlan v. Abeel, 47 S. W. 1041. Writ of error refused.
- Mendoza v. A., T. & S. F. Ry. Co., 60 S. W. 327. Application dismissed. 62 T. 418.
- Menger v. Ward, 28 S. W. 821. Writ of error granted. Reversed and rendered. 87 T. 622 (30 S. W. 853).
- Merchants Ins. Co. v. Bonnet, 48 S. W. 1110. Writ of error refused.
- Merchants Ins. Co. v. Reichman, 40 S. W. 831. Application dismissed.
- Merchants Ins. Co. v. Story, 13 C. A. 124 (35 S. W. 68). Writ of error refused.
- Merchants Natl. Bank v. Barker, 8 C. A. 332 (28 S. W. 698). Application dismissed. 87 T. 435.
- Merchants Natl. Bank v. McAnulty, 31 S. W. 1091; 32 Id. 376. Affirmed in part and in part reversed and rendered. 89 T. 124.
- Merchants Natl. Bank of Ft. W. v. Phillip & Wiggs Mach. Co., 15 C. A. 159 (39 S. W. 217). Writ of error refused.
- Mergenthaler Linotype Co. v. Williams. Writ of error refused.
- Merriam v. Zea (see Thornton v. Zea).
- Merritt v. Freiberg, 13 C. A. 201 (35 S. W. 835). Writ of error refused.
- Meston v. Davies, 36 S. W. 805. Writ of error refused.

- Met. Trust Co. v. F. & M. Natl. Bank**, 36 S. W. 131. Application dismissed. 89 T. 329.
- Mexia v. Lewis**, 3 C. A. 113 (21 S. W. 1016; 22 S. W. 397). On certificate of dissent. Certificate dismissed. 87 T. 208.
- Mexia v. Lewis**, 12 C. A. 102 (34 S. W. 158). Writ of error refused.
- Mex. Cent. Ry. Co. v. Goodman**, 20 C. A. 109 (48 S. W. 778). Application dismissed.
- Mex. Cent. Ry. Co. v. Lauricella**, 26 S. W. 301. Writ of error granted. Affirmed. 87 T. 277 (28 S. W. 277).
- Mex. Cent. Ry. Co. v. Mitten**, 13 C. A. 653 (36 S. W. 282). Writ of error refused.
- Mex. Natl. Ry. Co. v. Jackson**, 32 S. W. 230. Writ of error granted. Reversed and dismissed. 89 T. 107 (33 S. W. 857).
- Mex. Natl. Ry. Co. v. Mussette**, 24 S. W. 520. Writ of error granted. Affirmed. 86 T. 708 (26 S. W. 1075).
- Mex. Natl. Ry. Co. v. Savage**, 41 S. W. 663. Writ of error refused.
- Mex. Natl. Ry. Co. v. Ware**, 1 T. C. R. 391. Dismissed. 60 S. W. 343.
- Meyer v. Burke** (no written opinion). Writ of error refused.
- Meyer v. Hale**, 23 S. W. 990. Application dismissed.
- Meyer v. Miller**, 23 S. W. 993. Application dismissed.
- Meyer v. Orynski**, 25 S. W. 655. Writ of error refused.
- Meyer v. Stadtler**, 56 S. W. 108. Application dismissed.
- Meyer Bros. Drug Co. v. Marston** (no written opinion). Writ of error refused.
- Meyer Bros.' Drug Co. v. Rather**, 30 S. W. 812. Writ of error refused.
- Michalke v. G. H. & S. A. Ry. Co.**, 27 S. W. 164; 37 S. W. 480. Writ of error refused. 90 T. 276 (38 S. W. 31).
- Michelson v. White**, 25 S. W. 801. Application dismissed.
- Michigan S. & L. Assn. v. Atteberry**, 16 C. A. 222 (42 S. W. 569). Writ of error refused.
- Michigan Stove Co. v. Hardware Co.**, 1 T. C. R. 81. Application refused. 58 S. W. 734.
- Middlebrook v. Bradley Mfg. Co.**, 26 S. W. 113. On certificate of dissent. Reversed. 86 T. 706 (27 S. W. 169; 26 S. W. 935).

- Milburn Mfg. Co. v. Peak.** Certified questions. 89 T. 209 (34 S. W. 102).
- Miller v. Anders,** 21 C. A. 72 (51 S. W. 897). Writ of error refused.
- Miller v. Barler,** 26 S. W. 1105. Writ of error granted. Reversed and remanded. 89 T. 264 (34 S. W. 601).
- Miller v. Boone,** 22 S. W. 102. Writ of error granted. Reversed and judgment of district court affirmed. 86 T. 74 (23 S. W. 574).
- Miller v. Goodman,** 15 C. A. 244 (40 S. W. 743, 745). Writ of error refused. 91 T. 41.
- Miller v. Lovell,** 40 S. W. 835. Writ of error refused.
- Miller v. Miller,** 21 C. A. 382 (53 S. W. 362). Writ of error refused.
- Miller v. Sullivan,** 14 C. A. 112 (37 S. W. 778). Writ of error refused.
- Miller-Stone Mach. Co. v. Balfour,** 1 T. C. R. 306. Dismissed. 61 S. W. 972.
- Millican v. McNeil,** 50 S. W. 428. Writ of error refused. 92 T. 400 (49 S. W. 219).
- Mills v. M., K. & T. Ry. Co.,** 57 S. W. 291. Reversed. 59 S. W. 874.
- Mills v. Paul,** 30 S. W. 558. Affirmed in part and in part reversed and remanded. *Bassett v. Mills*, 89 T. 162.
- Mills County v. Brown County,** 30 S. W. 476. Certified questions. 87 T. 475 (29 S. W. 650).
- Mills County v. Lampasas County,** 40 S. W. 552. Certified questions. 90 T. 603 (40 S. W. 403).
- Milmo Natl. Bank v. Convery,** 49 S. W. 926. Writ of error refused.
- Minor v. Powers,** 24 S. W. 710. Writ of error granted. Affirmed and judgment of district court reversed and remanded. 87 T. 83 (26 S. W. 1071).
- Minter v. Burnett.** Certified questions. 90 T. 245 (38 S. W. 350).
- Mississippi Mills v. Bauman,** 12 C. A. 312 (34 S. W. 681). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Belcher.** Certified questions. 89 T. 428 (32 S. W. 518; 35 S. W. 6).
- Missouri, K. & T. Ry. Co. v. Belew,** 1 T. C. R. 39. Application refused. 61 S. W. 99.

- Missouri, K. & T. Ry. Co. v. Brantley, 1 T. C. R. 36. Application refused. 62 S. W. 94.
- Missouri, K. & T. Ry. Co. v. Burrough, 46 S. W. 403. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Calnon, 20 C. A. 697 (50 S. W. 422). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Chambers, 17 C. A. 487 (43 S. W. 1090). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Chenault (no published opinion). Writ of error granted. Reversed and remanded. 92 T. 501.
- Missouri, K. & T. Ry. Co. v. Chittim, 1 T. C. R. 350. Application refused. 60 S. W. 284.
- Missouri, K. & T. Ry. Co. v. Clonninger, 42 S. W. 632. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Connelly, 14 C. A. 529 (39 S. W. 145). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Cook, 8 C. A. 366 (33 S. W. 669; 34 Id. 178). Writ of error refused. 27 S. W. 769.
- Missouri, K. & T. Ry. Co. v. Cox, 55 S. W. 354. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Cox, 27 S. W. 1050. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Crane, 13 C. A. 426 (35 S. W. 797). Writ of error refused. 32 S. W. 11.
- Missouri, K. & T. Ry. Co. v. Crowder, 55 S. W. 380. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. De Bord & Lackey, 21 C. A. 691 (53 S. W. 587). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Dobbins, 40 S. W. 861. Writ of error granted. Affirmed and rendered. 91 T. 60 (41 S. W. 42).
- Missouri, K. & T. Ry. Co. v. Durlin, 50 S. W. 1034. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Edling, 18 C. A. 171 (45 S. W. 406). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Edwards, 32 S. W. 815. Writ of error granted. Reversed and remanded. 90 T. 65.
- Missouri, K. & T. Ry. Co. v. Enos (see Ft. W. & N. O. Ry. Co. v. Enos).
- Missouri, K. & T. Ry. Co. v. Evans, 16 C. A. 68 (41 S. W. 80). Writ of error refused.

- Missouri, K. & T. Ry. Co. v. Faulkner, 31 S. W. 543. Writ of error granted. Reversed and remanded. 88 T. 649 (32 S. W. 883).
- Missouri, K. & T. Ry. Co. v. Felts, 50 S. W. 1031. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Ferch, 18 C. A. 46 (44 S. W. 317). Writ of error refused. 36 S. W. 487.
- Missouri, K. & T. Ry. Co. v. Ferris, 55 S. W. 1119. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Fisher, 47 S. W. 284. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Gilmore, 53 S. W. 61. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Gordon, 11 C. A. 672 (33 S. W. 684). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Hamilton, 30 S. W. 679. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Hanacek, 93 T. 446 (55 S. W. 1117). Certified questions. 56 S. W. (C. A.) 938.
- Missouri, K. & T. Ry. Co. v. Hannig, 41 S. W. 196. Writ of error granted. Reversed and remanded. 91 T. 347 (43 S. W. 508).
- Missouri, K. & T. Ry. Co. v. Hannig, 20 C. A. 649 (49 S. W. 116). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Hanson, 13 C. A. 552 (36 S. W. 289). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Hauer, 43 S. W. 1078. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Hines, 18 C. A. 580 (45 S. W. 1130). Writ of error refused (see 40 S. W. 152; 47 S. W. 516).
- Missouri, K. & T. Ry. Co. v. Hogan, 30 S. W. 686. Writ of error granted. Reversed and judgment of district court affirmed. 88 T. 679 (32 S. W. 1035).
- Missouri, K. & T. Ry. Co. v. Holman, 15 C. A. 16 (39 S. W. 130). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Howell, 30 S. W. 98. Writ of error refused. 87 T. 429.
- Missouri, K. & T. Ry. Co. v. Huff, 32 S. W. 551. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Jamison, 34 S. W. 674. Writ of error refused. 27 S. W. 1090.

- Missouri, K. & T. Ry. Co. v. Johnson, 39 S. W. 323. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Johnson, 49 S. W. 265. Writ of error granted. Affirmed. 92 T. 380.
- Missouri, K. & T. Ry. Co. v. Jones, 13 C. A. 376 (35 S. W. 322, 199). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Kirkland, 11 C. A. 528 (32 S. W. 588). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Lacey, 13 C. A. 391 (35 S. W. 505). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Lyons, 53 S. W. 96. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. McElree, 16 C. A. 182 (41 S. W. 843). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. McFadden Bros., 32 S. W. 18. Writ of error granted. Reversed and remanded. 89 T. 137, 138 (32 S. W. 526; 33 S. W. 853).
- Missouri, K. & T. Ry. Co. v. McGlamory, 34 S. W. 359. Writ of error granted. Reversed and remanded. 89 T. 635 (35 S. W. 1058; 41 S. W. 466).
- Missouri, K. & T. Ry. Co. v. Magee, J. L., 49 S. W. 156. Writ of error granted. Affirmed. 92 T. 616.
- Missouri, K. & T. Ry. Co. v. Magee, C. E., 49 S. W. 928. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Manning, 20 C. A. 504. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Meithvein, 33 S. W. 1093. Application dismissed.
- Missouri, K. & T. Ry. Co. v. Milan, 20 C. A. 688 (50 S. W. 417). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Miller, 15 C. A. 428 (39 S. W. 583). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Miller, 1 T. C. R. 295. Application refused. 61 S. W. 976.
- Missouri, K. & T. Ry. Co. of Tex. v. Nail, 58 S. W. 165. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Nordell, 20 C. A. 362 (50 S. W. 601). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. O'Connell, 43 S. W. 66. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Overfield, 19 C. A. 440 (47 S. W. 684). Writ of error refused.

- Missouri, K. & T. Ry. Co. v. Parker, 20 C. A. 470 (49 S. W. 717; 50 Id. 606). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Quarles, 22 C. A. 83 (54 S. W. 251). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Rack, 21 C. A. 667 (52 S. W. 988). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Raines, 40 S. W. 635. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Ransom, 15 C. A. 689 (41 S. W. 826). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Reynolds, 26 S. W. 879. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Rodgers, 35 S. W. 412. Writ of error granted. Reversed and remanded. 89 T. 675 (39 S. W. 383; 36 S. W. 243).
- Missouri, K. & T. Ry. Co. v. Rogers, 40 S. W. 849, 956. Writ of error granted. Reversed and remanded. 91 T. 52.
- Missouri, K. & T. Ry. Co. v. Rose, 49 S. W. 133. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Russell, 8 C. A. 578 (28 S. W. 1042). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Sanders, 33 S. W. 245. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. St. Clair, 21 C. A. 345 (51 S. W. 666). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Scarborough, 51 S. W. 356. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Settle, 19 C. A. 357 (47 S. W. 825). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Sherman, 53 S. W. 386. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Simmons, 12 C. A. 500 (33 S. W. 1096). Application dismissed.
- Missouri, K. & T. Ry. Co. v. Sledge, 30 S. W. 1102. Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Stafford, 13 C. A. 192 (35 S. W. 48). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Starr, 22 C. A. 353 (55 S. W. 393). Writ of error refused.
- Missouri, K. & T. Ry. Co. v. Stone, 56 S. W. 933. Writ of error refused.

- Montgomery v. Hornberger, 16 C. A. 28 (40 S. W. 628).
Writ of error refused.
- Moody v. City of Galveston, 21 C. A. 16 (50 S. W. 481).
Writ of error refused.
- Moody v. Looscan, 44 S. W. 621. Writ of error refused.
- Moody & Co. v. McRimmon & Co., 7 C. A. 582 (27 S. W. 780). Application dismissed. 87 T. 260 (28 S. W. 279).
- Moon Bros. Car Co. v. Waxahachie G. & I. Co., 13 C. A. 103 (35 S. W. 337). Writ of error refused. 89 T. 511 (35 S. W. 1047).
- Moor v. Moor, 57 S. W. 992. Writ of error refused.
- Moore v. Bannerman, 45 S. W. 825. Writ of error refused.
- Moore v. Blagge, 34 S. W. 311. Writ of error granted.
Reversed and rendered. 91 T. 151.
- Moore v. Blum, 40 S. W. 511. Writ of error granted.
Affirmed. 91 T. 273.
- Moore v. Cross, 26 S. W. 122. Writ of error granted. Reversed and remanded. 87 T. 557.
- Moore v. Dunn, 16 C. A. 371 (41 S. W. 530). Writ of error refused.
- Moore v. Johnson, 34 S. W. 771. Writ of error refused.
- Moore v. Moore, 31 S. W. 532; 32 Id. 161. Writ of error granted. Affirmed. 89 T. 29.
- Moore v. Paris Oil & C. Co., 8 C. A. 27 (29 S. W. 821).
Writ of error refused.
- Moore v. Powell, 6 C. A. 43 (25 S. W. 472). Writ of error refused.
- Moore v. Vogel, 22 C. A. 235 (54 S. W. 1061). Writ of error refused. 93 T. 419.
- Moore v. Waco Bldg. Assn., 19 C. A. 68 (45 S. W. 974).
Writ of error refused.
- Moore, McKinney & Co. v. Temple Gro. Co., 43 S. W. 843.
Writ of error refused.
- Moran v. Wheeler, 26 S. W. 297. Writ of error granted. 87 T. 179 (27 S. W. 54).
- Morgan v. Butler, 56 S. W. 689. Writ of error refused.
- Morrill v. Smith County, 33 S. W. 899. Writ of error granted. Reversed and remanded. 89 T. 529.
- Morris v. Cummings. Certified questions. 91 T. 618 (45 S. W. 383).
- Morris v. Davis, 31 S. W. 850. Writ of error refused.

- Morris v. Eddins, 18 C. A. 38 (44 S. W. 293). Writ of error refused.
- Morris v. Tripplett, 44 S. W. 684. Application dismissed.
- Morrison v. Barry, 10 C. A. 22 (30 S. W. 376). Writ of error refused.
- Morrison v. Lazarus, 35 S. W. 498. Writ of error granted. Reversed and rendered. 90 T. 39.
- Morrison v. Western Union Tel. Co., 1 T. C. R. 289. Application refused. 59 S. W. 1129.
- Morris v. Stauffer, 32 S. W. 722. Writ of error refused.
- Morrowe v. Terrell, 21 C. A. 28 (50 S. W. 734). Writ of error refused.
- Mortimer Id. Co. v. Stringfellow (memorandum opinion, unpublished). Application dismissed.
- Moser v. Tucker, 26 S. W. 1105. Certified questions. 87 T. 74 (26 S. W. 1044).
- Moses v. Hansford, 32 S. W. 1050. Writ of error refused.
- Moses v. U. P. Ry. Co., 41 S. W. 154. Writ of error refused.
- Muench v. Oppenheimer. Certified questions. 86 T. 568 (26 S. W. 496).
- Muenster v. Tremont Natl. Bank, 46 S. W. 277. Writ of error granted. Reversed and remanded. 92 T. 422.
- Muhle v. N. Y. T. & M. Ry. Co., 23 S. W. 809; 24 Id. 312. Writ of error granted. Reversed and remanded. 86 T. 459 (25 S. W. 607).
- Mullaly v. Noyes, 26 S. W. 145. Writ of error refused.
- Mullen v. Mutual Life Ins. Co., 32 S. W. 911. Writ of error granted. Reversed and remanded. 89 T. 259 (34 S. W. 605).
- Murphy v. Williams, 56 S. W. 695. Writ of error refused.
- Murphy Bros. v. Nash, 45 S. W. 944. Writ of error dismissed.
- Mustain v. Stokes, 37 S. W. 602. Writ of error granted. Reversed and remanded. 90 T. 358.
- Mutual Life Ins. Co. of N. Y. v. Baker, 10 C. A. 515 (31 S. W. 1072). Application dismissed. 89 T. 263.
- Mutual L. Ins. Co. of N. Y. v. Elliott, 93 T. 144 (53 S. W. 1014). Certified questions.
- Mutual Life Ins. of N. Y. v. Hayward, 27 S. W. 36. Application dismissed. 88 T. 315.
- Mutual Life Ins. Co. v. Ky. v. Mellot, 57 S. W. 887. Writ of error refused.

- Ortiz v. Navarro, 10 C. A. 195 (30 S. W. 581). Writ of error refused.
- Ostrom v. Arnold, 58 S. W. 630. Writ of error refused.
- Ostrom v. McCloskey, 50 S. W. 1068. Writ of error refused.
- Ostrom v. City of San Antonio, 1 T. C. R. 496. Writ of error granted. 60 S. W. 591. Reversed. 62 S. W. 909.
- Otto v. Halff & Bro., 32 S. W. 1052. Writ of error granted. Reversed and rendered. 89 T. 384.
- Owen v. De Begue (see De Begue v. Owen).
- Owens v. N. Y. & T. L. Co., 11 C. A. 284 (32 S. W. 189, 1057). Application dismissed.
- Owens v. N. Y. & T. L. Co., 45 S. W. 601. Writ of error refused.
- Oxsheer v. Nave, 40 S. W. 1102. Certified questions. 90 T. 570 (40 S. W. 7).
- Oxsheer v. Watt, 42 S. W. 121. Writ of error granted. Affirmed. 91 T. 402 (41 S. W. 466; 44 S. W. 67). 91 T. 124.
- Ozee v. City of Henrietta, 40 S. W. 1102. Application dismissed. 90 T. 334 (38 S. W. 768).
- Pace v. Potter, 20 S. W. 928. Writ of error granted. Reversed and rendered. 85 T. 473.
- Paddock v. Jackson, 16 C. A. 655 (41 S. W. 700). Writ of error refused.
- Paddock v. Texas Bldg. & L. Ass'n, 13 C. A. 514 (36 S. W. 1008). Writ of error refused.
- Padgett v. Dallas Brick & Constr. Co., 51 S. W. 529. Writ of error refused. 92 T. 626 (50 S. W. 1010).
- Palatine Ins. Co. v. Brown, 34 S. W. 462. Writ of error granted. Reversed and judgment of the district court affirmed. 89 T. 590 (35 S. W. 1060).
- Palatine Ins. Co. v. McKinley, 37 S. W. 1133. Writ of error refused.
- Palestine Cotton Seed Oil Co. v. Corsicana Cotton Oil Co., 1 T. C. R. 64-273. Writ of error refused. 61 S. W. 433.
- Palestine Water & P. Co. v. City of Palestine, 41 S. W. 659. Writ of error granted. Affirmed. 91 T. 540 (44 S. W. 814).
- Palmer v. Ott, 26 S. W. 526. Writ of error refused.
- Pape v. Pape, 13 C. A. 99 (35 S. W. 479). Application dismissed.

- Pardce v. Adamson, 19 C. A. 263 (46 S. W. 43). Writ of error refused.
- Pardue v. White, 21 C. A. 121 (50 S. W. 591). Writ of error refused.
- Parker v. Am. Exch. Bank of St. Louis, 27 S. W. 1071. Writ of error refused.
- Parker v. Fogarty, 4 C. A. 615 (23 S. W. 700). Writ of error refused.
- Parker v. Walker, 15 C. A. 370 (39 S. W. 611). Writ of error refused.
- Parks v. Locke, 25 S. W. 702. Writ of error refused.
- Parks, Adm'r, v. Lubbock, 50 S. W. 466. Writ of error granted. Reversed and rendered. 92 T. 635.
- Parlin & Orendorff Co. v. Cantrell, 40 S. W. 415. Writ of error refused.
- Parlin & Orendorff Co. v. Coffey, 1 T. C. R. 155. Writ of error refused. 61 S. W. 512.
- Parlin & Orendorff Co. v. Hanson, 21 C. A. 401 (53 S. W. 62). Writ of error refused.
- Parlin & Orendorff Co. v. Miller, 1 T. C. R. 730. Writ of error refused. 60 S. W. 881.
- Paris Exch. Bank v. Hulen, 21 C. A. 285. Writ of error refused.
- Parish v. Mut. Ben. Life Ins. Co. 19 C. A. 457 (49 S. W. 153). Writ of error refused.
- Parr v. Halliburton (see Hopkins v. Halliburton).
- Parrish v. Frey, 18 C. A. 271 (44 S. W. 322). Writ of error refused.
- Parrish v. Williams, 53 S. W. 79. Application dismissed.
- Parsons v. Hart, 19 C. A. 300 (46 S. W. 856). Writ of error refused.
- Paschall v. Pioneer Sav. & L. Ass'n, 47 S. W. 98. Writ of error refused.
- Paterson v. Lamb, 21 C. A. 512 (52 S. W. 98). Writ of error refused.
- Paterson v. Seeton, 19 C. A. 430 (47 S. W. 732). Writ of error refused.
- Patrick v. Badger, 41 S. W. 538. Writ of error refused.
- Patrick v. LaPrelle, 40 S. W. 552; 37 Id. 872. Application dismissed.
- Patten v. Herring, 9 C. A. 640 (29 S. W. 388). Writ of error refused.

- Phoenix Lumber Co. v. Houston Water Co., 1 T. C. R. 546.
Writ of error granted. 59 S. W. 552; 61 S. W. 707.
- Pierson v. Bryan (see Bryan v. Pierson).
- Pierson v. Cahill, 36 S. W. —. Writ of error refused.
- Pierson v. Sanger Bros., 51 S. W. 869. Writ of error granted.
Reversed and remanded. 93 T. 160.
- P. J. & Eubank Co. v. Cummins, 57 S. W. 566. Certified questions.
- P. J. Willis & Bro. Co. v. Sommerville, 3 C. A. 509 (22 S. W. 781). Writ of error refused.
- Pinkard v. Willis, 57 S. W. 891. Writ of error refused.
- Pioneer Sav. & L. Ass'n v. Bauman, 58 S. W. 49. Writ of error refused.
- Pioneer Sav. & L. Ass'n v. Dougherty, 35 S. W. 698. Writ of error refused.
- Pioneer Sav. & L. Ass'n v. Nall, 36 S. W. 322. Writ of error refused.
- Pioneer Sav. & L. Ass'n v. Pancost, 17 C. A. 312 (43 S. W. 280). Writ of error refused.
- Pioneer Sav. & L. Ass'n v. Paschal, 34 S. W. 1001; 47 S. W. 98. Writ of error refused.
- Pioneer Sav. & L. Ass'n v. Peck & Fly, 20 C. A. 111 (49 S. W. 160). Writ of error refused.
- Pires v. Snodgrass (no published opinion). Writ of error granted. Reversed and remanded. 91 T. 105.
- Pitts v. Elser, 32 S. W. 146. Certified questions. 87 T. 347 (28 S. W. 518).
- Planters & Mech. Bank v. Floeck, 17 C. A. 418 (43 S. W. 589). Writ of error refused.
- Pledger v. Sov. Camp W. of W., 17 C. A. 18 (42 S. W. 653). Writ of error refused.
- Plummer v. Gholson, 44 S. W. 1. Writ of error refused.
- Polk v. Phillips, 92 T. 630 (51 S. W. 328). Certified questions. 51 S. W. (C. A.) 534.
- Polk v. Shoemaker, 41 S. W. 539. Writ of error refused.
- Pontiac Buggy Co. v. Dupree, 56 S. W. 703. Writ of error refused.
- Pontotoc Ind. School District v. Johnson, 1 T. C. R. 73. Writ of error refused. 59 S. W. 53.
- Porter v. Martyn, 32 S. W. 731. Writ of error refused.
- Porter v. Williams (no written opinion). Writ of error refused.

- Postal Tel. Cable Co. of Texas v. Coote, 57 S. W. 912. Writ of error refused.
- Powers v. Gurley (see Hanrick v. Gurley).
- Powers v. Morrison, 30 S. W. 349. Writ of error granted. Reversed and remanded. 88 T. 133.
- Posey v. Aiken (opinion unpublished). Writ of error refused.
- Presidio County v. City Natl. Bank of Paducah, 20 C. A. 511 (44 S. W. 1069). Writ of error refused.
- Presidio County v. Jeff Davis County, 13 C. A. 115 (35 S. W. 177). Writ of error refused.
- Preston v. Fahey, 31 S. W. 63. Writ of error refused.
- Prewitt v. Day. Certified questions. 86 T. 166 (23 S. W. 982).
- Price v. Kendall, 14 C. A. 26 (36 S. W. 810). Writ of error refused.
- Price & Lucas v. Marshall (see Bank of California v. Marshall).
- Primm v. Fort, 57 S. W. 86. Writ of error refused.
- Prim v. Glass, 48 S. W. 57. Writ of error refused.
- Prior v. North Texas Natl. Bank, 29 S. W. 84. Writ of error refused.
- Proctor v. San Antonio St. Ry. Co., 1 T. C. R. 570. Application refused. 62 S. W. 939.
- Producers Marble Co. v. Bergen, 31 S. W. 89. Writ of error refused.
- Prouty v. Musquiz, 58 S. W. 721. Certified questions. 59 S. W. (C. A.) 569.
- Provident Sav. L. Ass'n of N. Y. v. Oliver, 22 C. A. 8 (53 S. W. 594). Writ of error refused.
- Pruitt v. State, 92 T. 434 (49 S. W. 366). Certified questions. 47 S. W. 553.
- Pryor v. Jolly, 39 S. W. 1019. Writ of error granted. Reversed and remanded. 91 T. 86.
- Pryor v. Pendleton, 49 S. W. 403. Writ of error granted. Affirmed. 92 T. 384.
- Pryor v. North Texas Natl. Bank, 29 S. W. 84. Writ of error refused.
- Puckett v. McDaniel, 8 C. A. 630 (28 S. W. 360). Writ of error refused.
- Puckett v. Waco Abst. & Inv. Co., 16 C. A. 329 (40 S. W. 812). Writ of error refused.

- Richardson v. Richardson, 42 S. W. 248. Writ of error refused.
- Richardson v. Vaughn, 22 S. W. 1112. Writ of error granted. affirmed. 86 T. 93 (23 S. W. 640).
- Richardson v. Washington. Certified questions. 88 T. 339 (31 S. W. 614).
- Ricketts v. W. U. Tel. Co., 10 C. A. 226 (30 S. W. 1105). Writ of error refused.
- Rierson v. Gillespie (see Gillespie v. Crawford). Writ of error refused.
- Riesner v. G. C. & S. F. Ry. Co. Certified questions. 89 T. 656 (36 S. W. 53).
- Rigsby v. Galceron, 15 C. A. 377 (39 S. W. 650). Writ of error refused.
- Riley v. Wilson. Certified questions. 86 T. 240 (24 S. W. 394).
- Rintleman v. Hahn, 20 C. A. 244 (49 S. W. 174). Writ of error refused.
- Rio Grande Ry. Co. v. Armandiaz, 5 C. A. 449 (23 S. W. 568). Writ of error refused.
- Rio Grande Ry. Co. v. Cross, 5 C. A. 454 (23 S. W. 529, 1004). Writ of error refused.
- Rio Grande Ry. Co. v. Munoz, 23 S. W. 531. Writ of error refused.
- Rio Grande Ry. Co. v. Petitpain, 23 S. W. 531. Writ of error refused.
- Riter v. Houston, O. R. & M. Co., 48 S. W. 758. Writ of error refused.
- Ritz v. City of Austin, 1 C. A. 455 (20 S. W. 1029). Writ of error refused.
- Ritz v. City of Austin, 20 S. W. 1031. Writ of error refused.
- Rivera v. White (no published opinion). Reversed. 63 S. W. 125.
- Rives v. Stephens, 28 S. W. 707. Writ of error refused.
- Robb v. Henry, 40 S. W. 1047. Writ of error refused.
- Roberts v. Sanger Bros., 48 S. W. 1. Writ of error granted. Reversed and remanded. 92 T. 312.
- Roberts, Willis, Taylor & Co. v. Sun. Mnt. L. Ins. Co., 19 C. A. 338 (48 S. W. 559). Writ of error refused.
- Roberts, Willis, Taylor & Co. v. Sun. Mnt. Ins. Co., 35 S. W. 955. Application dismissed. 90 T. 78.

- Roberts v. Trout**, 13 C. A. 70 (35 S. W. 323). Writ of error refused.
- Robertson v. Coates**, 1 C. A. 664 (20 S. W. 875). Writ of error refused.
- Robinson v. Garrett**, 54 S. W. 269. Writ of error granted. Reversed and judgment of district court affirmed. 93 T. 406.
- Robinson v. State**, 28 S. W. 566. Application dismissed. 87 T. 562 (29 S. W. 649).
- Robinson v. Thompson**, 52 S. W. 117. Writ of error granted. Reversed and judgment of district court affirmed. 93 T. 165.
- Robson v. Byler**, 14 C. A. 374 (37 S. W. 872). Writ of error refused. 90 T. 282.
- Rock Is. Plow Co. v. Hill**, 32 S. W. 242. Writ of error refused.
- Roe v. Thomason**, 1 T. C. R. 112. Writ of error refused. 61 S. W. 528.
- Rogers v. Concho Cattle Co.**, 38 S. W. 656. Writ of error granted. Reversed and rendered. 90 T. 555.
- Rogers v. East Line Lumber Co.**, 11 C. A. 108 (33 S. W. 312). Writ of error refused.
- Rogers v. Flourney**, 21 C. A. 556 (54 S. W. 386). Writ of error refused.
- Rogers v. Houston**, 60 S. W. 869. Certified questions. 60 S. W. (C. A.) 445.
- Rogers v. Oates** (no written opinion). Writ of error refused.
- Rogers v. Roberts**, 13 C. A. 190 (35 S. W. 76). Writ of error refused.
- Roller v. Holley**, 13 C. A. 636 (35 S. W. 1074). Writ of error refused. Reversed by United States Supreme Court.
- Roller v. Reid**, 24 S. W. 655. Writ of error granted. Reversed and remanded. 87 T. 69.
- Root v. Baldwin**, 52 S. W. 586. Writ of error refused.
- Root v. Robertson** (no published opinion). Writ of error granted. Reversed and remanded. 93 T. 365.
- Rosenberg v. State** (no written opinion. See *State v. Rosenberg*, 7 C. A. 487). Writ of error refused.
- Ross v. Strahorn, Hutton, Evans Commission Co.**, 18 C. A. 698 (46 S. W. 398). Writ of error refused.
- Rowan v. Daniel**, 20 C. A. 321 (49 S. W. 686). Writ of error refused.

- Rowan v. King**, 55 S. W. 123. Certified questions. 56 S. W. (C. A.) 103.
- Roy v. Whitaker**, 50 S. W. 491. Writ of error refused. 92 T. 346 (48 S. W. 892).
- Royal v. G. C. & S. F. Ry. Co.**, 32 S. W. 186. Application dismissed.
- Royal Ins. Co. v. McIntyre**, 34 S. W. 669. Writ of error granted. Reversed and remanded. 90 T. 170.
- Rucker v. Strong** (no published opinion). Writ of error refused.
- Russell v. Campbell**, 32 S. W. 858. Writ of error refused.
- Russell v. M., K & T. Ry. Co.**, 12 C. A. 627 (35 S. W. 724). Writ of error refused.
- Sabine & E. T. Ry. Co. v. Ewing**, 7 C. A. 8 (26 S. W. 638). Writ of error refused.
- Sabine & E. T. Ry. Co. v. Gulf & I. Ry. Co. of Texas**, 92 T. 162 (46 S. W. 784). Certified questions. 47 S. W. 836.
- Sabine Tram. Co. v. Bancroft & Sons**, 39 S. W. 177. Writ of error refused.
- Sabine Tram. Co. v. Bancroft & Sons**, 16 C. A. 170 (40 S. W. 837). Writ of error refused.
- Sage v. Clopper**, 19 C. A. 502 (48 S. W. 36). Writ of error refused.
- St. Clair v. Grand Lodge A. O. U. W.** (see *West v. Same*, post).
- St. Louis, A. & T. Ry. Co. v. Henderson**, 32 S. W. 143. Writ of error granted. Reversed and remanded. 86 T. 307 (24 S. W. 381).
- St. Louis Brewing Ass'n v. Walker**, 54 S. W. 360. Writ of error refused.
- St. Louis E. Metal Co. v. Burgess**, 20 C. A. 527 (50 S. W. 486). Writ of error refused.
- St. Louis & S. F. Ry. Co. v. Craig**, 10 C. A. 238 (31 S. W. 207). Writ of error refused.
- St. Louis & S. F. Ry. Co. v. Williams**, 37 S. W. 999. Application dismissed.
- St. Louis, S. W. Ry. Co. v. Byas**, 12 C. A. 657 (35 S. W. 22). Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Cassaday**, 48 S. W. 6. Writ of error granted. Reversed and remanded. 92 T. 525.
- St. Louis, S. W. Ry. Co. of Texas v. Chambliss**, 93 T. 62 (53 S. W. 343). Certified questions. 54 S. W. (C. A.) 401.

- St. Louis, S. W. Ry. Co. v. Freedman, 18 C. A. 553 (46 S. W. 101). Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Griffith, 35 S. W. 741. Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Hall-Brown, W. W. M. Co., 56 S. W. 140. Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Hargrove, 31 S. W. 696. Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Huffman, 32 S. W. 30. Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Humphreys, 1 T. C. R. 519. Writ of error refused. 62 S. W. 79.
- St. Louis, S. W. Ry. Co. v. Kay. Certified questions. 85 T. 558 (23 S. W. 91; 22 S. W. 665).
- St. Louis, S. W. Ry. Co. v. Mayfield, 1 T. C. R. 25. Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Mitchell, 1 T. C. R. 32. Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Nelson, 44 S. W. 179. Writ of error refused.
- St. Louis, S. W. Ry. Co. v. Shiflet, 56 S. W. 679. Writ of error granted. Reversed. 58 S. W. 945.
- St. Louis, S. W. Ry. Co. v. Smith, 20 C. A. 451 (49 S. W. 627). Writ of error refused.
- Salmon v. Huff, 9 C. A. 164 (28 S. W. 1044; 29 S. W. 693). Writ of error refused.
- Sams v. Creager (see Marsalis v. Creager).
- San Angelo Natl. Bank v. Fitzpatrick, 28 S. W. 95; 29 Id. 912. Writ of error refused. 88 T. 213.
- San Antonio & A. P. Ry. Co. v. Adams, 6 C. A. 102 (24 S. W. 839). Application dismissed.
- San Antonio & A. P. Ry. Co. v. Beam, 50 S. W. 411. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Bergsland, 12 C. A. 97 (34 S. W. 155). Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Bergsland, 34 S. W. 157. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Bowles, 30 S. W. 89, 727. Writ of error granted. Affirmed. 88 T. 634.
- San Antonio & A. P. Ry. Co. v. Brooking, 51 S. W. 537. Writ of error refused.

- San Antonio & A. P. Ry. Co. v. Busch, 23 S. W. 308. Application dismissed.
- San Antonio & A. P. Ry. Co. v. Choate, 91 T. 406 (43 S. W. 537). Writ of error refused. 91 T. 409.
- San Antonio & A. P. Ry. Co. v. Choate, 35 S. W. 180. Writ of error granted. Reversed and remanded. 90 T. 82.
- San Antonio & A. P. Ry. Co. v. Choate, 22 C. A. 618 (56 S. W. 214). Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Corley, 26 S. W. 903. Writ of error granted. Affirmed. 87 T. 432.
- San Antonio & A. P. Ry. Co. v. Deham, 54 S. W. 395. Writ of error refused. 93 T. 74 (53 S. W. 375).
- San Antonio & A. P. Ry. Co. v. Engelhorn, 1 T. C. R. 312. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Gillum, 30 S. W. 697. Writ of error granted. Affirmed. 31 S. W. 356.
- San Antonio & A. P. Ry. Co. v. Green, 20 C. A. 5. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Green, L. B., 49 S. W. 672. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Green, Wm., 49 S. W. 670. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Griffin, 20 C. A. 91 (48 S. W. 542). Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Gurley, 44 S. W. 865. Writ of error granted. Affirmed. 92 T. 229.
- San Antonio & A. P. Ry. Co. v. Hammon, 47 S. W. 1025. Writ of error granted. Reversed and remanded. 92 T. 509.
- San Antonio & A. P. Ry. Co. v. Harding, 11 C. A. 497 (33 S. W. 373). Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Holden, 55 S. W. 603. Writ of error refused. 93 T. 211 (54 S. W. 751).
- San Antonio & A. P. Ry. Co. v. Keller, 11 C. A. 569 (32 S. W. 847). Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Long, 28 S. W. 214. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Long, 48 S. W. 599. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Long, 26 S. W. 114. Writ of error granted. Reversed and remanded. 87 T. 148.

- San Antonio & A. P. Ry. Co. v. Manning**, 50 S. W. 177. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. McDonald**, 31 S. W. 72. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Mohl**, 37 S. W. 22. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Morgan**, 45 S. W. 169. Writ of error granted. Reversed and remanded. 92 T. 98 (45 S. W. 374; 46 S. W. 28).
- San Antonio & A. P. Ry. Co. v. Morgan**, 58 S. W. 544. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Parr**, 26 S. W. 861. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Pratt & Young**, 32 S. W. 705. Certified questions. 89 T. 310 (34 S. W. 445).
- San Antonio & A. P. Ry. Co. v. Peterson**, 20 C. A. 495 (49 S. W. 924). Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Safford**, 48 S. W. 1105. Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Short** (see *Gulf, C. & S. F. Ry. Co. v. Short*).
- San Antonio & A. P. Ry. Co. v. S. W. Tel. & Telephone Co.**, 93 T. 313 (55 S. W. 117). Certified questions. 60 S. W. (C. A.) 1135.
- San Antonio & A. P. Ry. Co. v. Way**, 9 C. A. 214 (29 S. W. 205). Writ of error refused.
- San Antonio & A. P. Ry. Co. v. Williams**, 52 S. W. 89. Writ of error refused.
- San Antonio Edison Co. v. Beyer**, 57 S. W. 851. Writ of error refused.
- San Antonio Edison Co. v. Dixon**, 17 C. A. 320 (42 S. W. 1009). Writ of error refused.
- San Antonio Gas Co. v. Robertson**, 55 S. W. 347. Writ of error granted. Reversed and remanded. 93 T. 503.
- San Antonio Gas Co. v. State**, 22 C. A. 118 (54 S. W. 289). Writ of error refused.
- San Antonio & G. S. Ry. Co. v. Ryan**, 47 S. W. 749. Writ of error refused.
- San Antonio Real E. B. & L. Ass'n v. Stewart**, 61 S. W. 386. Certified questions.
- San Antonio St. Ry. Co. v. Adams**, 25 S. W. 639. Writ of error granted. Reversed and rendered. 87 T. 125.

- San Antonio St. Ry. Co. v. City of San Antonio**, 39 S. W. 136.
Writ of error refused.
- San Antonio St. Ry. Co. v. Mechler**, 29 S. W. 202. Writ of error granted. Affirmed. 87 T. 628.
- San Antonio St. Ry. Co. v. Muth**, 7 C. A. 443 (27 S. W. 752).
Writ of error refused.
- San Antonio St. Ry. Co. v. Renkin**, 15 C. A. 229 (38 S. W. 829). Writ of error refused.
- San Antonio St. Ry. Co. v. State**, 38 S. W. 54. Writ of error granted. Reversed and dismissed. 90 T. 520.
- San Antonio Traction Co. v. White**, 1 T. C. R. 443. Application granted. 60 S. W. 323. Reversed. 61 S. W. 706.
- Sanborn v. Murphy**, 5 C. A. 509 (25 S. W. 459). Writ of error granted. Affirmed. 86 T. 437.
- Sanburn v. Schuler**, 3 C. A. 629 (22 S. W. 119). Writ of error refused.
- Sanburn v. Shuler**, 3 C. A. 629 (22 S. W. 119). Writ of error refused. 86 T. 116 (23 S. W. 641).
- Sanchez v. S. A. & A. P. Ry. Co.**, 27 S. W. 922. Writ of error granted. Affirmed. 88 T. 117 (30 S. W. 431).
- Sanders v. Hall**, 22 C. A. 282 (55 S. W. 594). Writ of error refused.
- Sanders v. Kirby**, 63 S. W. 626. Certified questions.
- Sanderson v. Faulk**, 35 S. W. 409. Writ of error granted. Reversed and judgment of district court affirmed. 89 T. 692.
- Sandoval v. Rosser**, 26 S. W. 930. Certified questions. 86 T. 682 (26 S. W. 933).
- Sanger Bros. v. Burke Bros.**, 8 C. A. 106 (44 S. W. 871; see 43 S. W. 1070). Writ of error refused.
- Sanger Bros. v. City of Waco**, 15 C. A. 424 (40 S. W. 549).
Writ of error refused.
- Sanger v. Henderson**, 1 C. A. 412 (21 S. W. 114). Application dismissed. 85 T. 404.
- Sanger v. Hicks Co., Ltd.**, 22 C. A. 473 (56 S. W. 775). Writ of error refused.
- Sanger v. Warren**, 40 S. W. 840. Writ of error granted. Reversed and remanded. 91 T. 472.
- Sanner v. A. T. & S. F. Ry. Co.**, 17 C. A. 337 (43 S. W. 533). Writ of error refused.

- Santleben v. Forboese, 17 C. A. 626 (43 S. W. 571). Writ of error refused.
- Saunders v. Ireland, 27 S. W. 880. Writ of error refused.
- Saunders v. Ireland, 27 S. W. 880. Writ of error refused. 87 T. 316 (28 S. W. 271).
- Saunders v. Kempner, 32 S. W. 585. Writ of error refused.
- Sayers v. Davis, 51 S. W. 520. Writ of error refused.
- Sayles v. Bradley, 49 S. W. 209. Certified questions. 92 T. 406.
- Scales v. Johnson, 41 S. W. 828. Writ of error refused.
- Scanlan v. Campbell, 22 C. A. 505 (55 S. W. 501). Writ of error refused.
- Scarborough v. Eubank, 93 T. 106 (53 S. W. 573). Certified questions. 52 S. W. (C. A.) 679.
- Schauer & Co. v. Beitel's Extr., 49 S. W. 145. Writ of error granted. Affirmed. 92 T. 601.
- Schintz v. Morris, 18 C. A. 580 (35 S. W. 516, 825; 36 Id. 292). On certificate of dissent. Dismissed. 89 T. 648.
- Schleicher v. Runge, 37 S. W. 982. Application dismissed. 90 T. 456.
- Schley v. Blum, 22 S. W. 264. Application dismissed. 85 T. 551 (22 S. W. 667).
- Schley v. Maddox, 22 S. W. 998. Writ of error refused.
- Schloss v. A. T. & S. F. Ry. Co., 23 S. W. 392. Certified questions. 85 T. 601 (22 S. W. 1014).
- Schmidt v. Huff, 28 S. W. 1053. Application dismissed.
- Powers v. Schmidt, 87 T. 385.
- Schmitt v. Jacques, 1 T. C. R. 576. Writ of error refused. 62 S. W. 956.
- Schneider, Davis Co. v. Brown, 46 S. W. 108. Writ of error refused.
- Schneider v. Sellers, 1 T. C. R. 192. Dismissed. 61 S. W. 54.
- Schulz v. Tessman, 48 S. W. 207. Writ of error granted. Reversed and remanded. 92 T. 488.
- Schuster v. F. & M. Natl. Bank of Waco, 54 S. W. 777. Writ of error refused.
- Schwarz v. McCall, 57 S. W. 31. Certified questions.
- Scollard v. City of Dallas, 16 C. A. 620 (42 S. W. 640). Writ of error refused.
- Scott v. Childers, 1 T. C. R. 688. Writ of error refused. 60 S. W. 775.

- Scott v. Crawford**, 16 C. A. 477 (41 S. W. 697). Writ of error refused.
- Scott v. Hunt**, 49 S. W. 210. Certified questions. 92 T. 389.
- Scott v. Rockwall County**, 50 S. W. 476. Writ of error refused.
- Scott v. State**, 55 S. W. 1134. 6 C. A. 343 (25 S. W. 337). Writ of error refused. (To a former judgment, dismissing appeal, writ of error was granted, and that judgment reversed and cause remanded). 86 T. 321 (24 S. W. 789).
- Scott v. T. & P. Ry. Co.**, 56 S. W. 97. Writ of error granted. Reversed and remanded. 93 T. 625 (57 S. W. 800).
- Scottish-Am. Mtg. Co. v. Board of Equalization**, 45 S. W. 757. Application dismissed.
- Scottish-Am. Mtg. Co. v. Jamison**, 46 S. W. 886. Writ of error refused.
- Scottish-Am. Mtg. Co. v. Massie** —. Reversed and rendered. 60 S. W. 44.
- Scottish-Am. Mtg. Co. v. Scripture**, 40 S. W. 210. Application dismissed.
- Scottish-Union Natl. Ins. Co. v. Clancey**, 45 S. W. 1131. Certified questions. 91 T. 467 (44 S. W. 482).
- Scripture v. Scottish-Am. Mtg. Co.**, 20 C. A. 153 (49 S. W. 644). Writ of error refused.
- Scrivener v. City of Paris**, 1 T. C. R. 620. Writ of error refused. 62 S. W. 1075.
- Searight v. City of Austin**, 42 S. W. 857. Writ of error refused.
- Seay v. Fennell**, 15 C. A. 261 (39 S. W. 181). Writ of error refused.
- Sebastian v. Cheney**, 24 S. W. 970. Writ of error granted. Reversed and remanded. 86 T. 497.
- Security Co. v. Panhandle Natl. Bank** (see Delaware Ins. Co. v. Security Co.).
- Security Mtg. & T. Co. v. Am. Cent. Ins. Co.** (see Am. Cent. Ins. Co. v. Cowan).
- Security Mtg. & T. Co. v. Gill**, 8 C. A. 358 (27 S. W. 835). Writ of error refused.
- Segal v. Armstead**, 1 T. C. R. 615. Writ of error refused. 62 S. W. 1073.

- Seibert v. Bergman, 44 S. W. 872. Certified questions. 91 T. 411 (44 S. W. 63).
- Seibert v. Richardson. Certified questions. 86 T. 295 (24 S. W. 261).
- Seinsheimer v. Flanagan, 17 C. A. 427 (44 S. W. 30). Writ of error refused.
- Seinsheimer v. Kahn, 6 C. A. 143 (24 S. W. 533). Writ of error refused.
- Seip v. Grinnan, 36 S. W. 349. Writ of error refused.
- Semple v. Eubanks, 13 C. A. 418 (35 S. W. 509). Writ of error refused.
- Settegast v. Blount, 46 S. W. 268. Writ of error refused.
- Sevier v. Carson, 28 S. W. 224. Writ of error refused.
- Seward Confectionery Co. v. Ullman, 35 S. W. 1072. Certified questions. 89 T. 504 (35 S. W. 469).
- Sewell v. Connor, 23 S. W. 555. Writ of error refused. 90 T. 275 (38 S. W. 35).
- Seymour Opera House Co. v. Thurston, 18 C. A. 417 (45 S. W. 815). Writ of error refused.
- Shackleford v. Thomson, 24 S. W. —. Writ of error refused.
- Shapleigh Hardware Co. v. Wells. Certified questions. 90 T. 110 (37 S. W. 411).
- Shattuck v. Clark, 34 S. W. 404. Writ of error refused.
- Shappard v. Cage, 19 C. A. 206 (Cage v. Shappard, 46 S. W. 839). Writ of error refused.
- Shaw v. Holloway, 13 C. A. 254 (35 S. W. 800). Writ of error refused.
- Shelby County v. Gibson, 18 C. A. 121 (44 S. W. 302). Writ of error refused.
- Sheldon v. Caples, 7 C. A. 151 (26 S. W. 330). Writ of error refused.
- Sheldon v. Milmo, 29 S. W. 832. Writ of error granted. Reversed and rendered. 90 T. 1 (36 S. W. 413).
- Shelton v. Jackson, 20 C. A. 443 (49 S. W. 415). Writ of error refused.
- Shepard v. Avery, 32 S. W. 791. Writ of error granted. Reversed and remanded. 89 T. 301.
- Sherman Oil & C. Co. v. Stewart, 17 C. A. 59 (42 S. W. 241). Writ of error refused.
- Sherman, S. & S. Ry. Co. v. Bridges, 16 C. A. 64 (40 S. W. 536). Writ of error refused.

- Sherman, S. & S. Ry. Co. v. Conley**, 37 S. W. 253. Writ of refused. 90 T. 295.
- Sherman, S. & S. Ry. Co. v. Eaves**, 1 T. C. R. 192. Writ of error refused. 61 S. W. 550.
- Sherman, S. & S. Ry. Co. v. Payne**, 40 S. W. 43. Writ of error refused.
- Sherman Steam Laundry Co. v. Carter**, 1 T. C. R. 383. Writ of error refused. 60 S. W. 328.
- Shetter v. Ft. W. & D. C. Ry. Co.**, 46 S. W. 875. Application dismissed.
- Shields v. Aultman, Miller & Co.**, 20 C. A. 345 (50 S. W. 219). Writ of error refused.
- Shiner v. Shiner**, 14 C. A. 489 (40 S. W. 439). Writ of error refused.
- Shippey v. Hough**, 19 C. A. 596 (47 S. W. 672). Writ of error refused.
- Short v. Hepburn**. Certified questions. 89 T. 622 (35 S. W. 1056).
- Shumate v. Champion**, 90 T. 597 (39 S. W. 128). Writ of error granted. Affirmed and rendered. 90 T. 597.
- Sickles v. M., K. & T. Ry. Co.**, 13 C. A. 434 (35 S. W. 493). Writ of error refused.
- Sieders v. Merchants L. Assn. of U. S.**, 51 S. W. 547. Writ of error granted. Reversed and rendered. 93 T. 194.
- Silliman v. Gano** (no published opinion). Writ of error granted. Reversed and remanded. 90 T. 637.
- Simang v. Harris**, 27 S. W. 786. Writ of error refused.
- Simon v. Stearns**, 17 C. A. 13 (43 S. W. 50). Writ of error refused.
- Simon Gregory & Co. v. Sutton**, 45 S. W. 559. Writ of error refused.
- Simonton v. White**, 49 S. W. 269. Writ of error granted. Reversed and remanded. 93 T. 50.
- Simmons Hardware Co. v. Davis**, 27 S. W. 426. Writ of error granted. Reversed and remanded. 87 T. 146.
- Simpkins v. Searcy**, 10 C. A. 406 (32 S. W. 849). Writ of error refused.
- Simpson v. Edens**, 14 C. A. 235 (38 S. W. 474). Writ of error refused.
- Simpson v. Johnson**, 44 S. W. 1076. Writ of error granted. Reversed and remanded. 92 T. 159.

- Sims v. Ford** (opinion unpublished). Writ of error granted. Reversed and judgment of district court affirmed. **Ford v. Sims**, 93 T. 586 (57 S. W. 20).
- Sinsheimer v. Kuhn**, 6 C. A. 143 (24 S. W. 533). Writ of error refused.
- Skipwith v. Hunt**, 58 S. W. 192. Reversed. 60 S. W. 423.
- Slagle v. Payne**, 50 S. W. 500. Writ of error refused.
- Slaughter v. Moore**, 17 C. A. 233 (42 S. W. 372). Writ of error refused.
- Slayden v. Stone**, 19 C. A. 618 (47 S. W. 747). Writ of error refused.
- Smelser v. Baker**, 6 C. A. 751 (26 S. W. 905). Writ of error granted. Reversed and judgment of district court affirmed. 88 T. 26 (29 S. W. 377).
- Smith v. Adams**, 4 C. A. 5 (23 S. W. 49). Writ of error refused.
- Smith v. Allen**, 40 S. W. 204. Writ of error refused.
- Smith v. Cantrell**, 50 S. W. 1081. Writ of error refused.
- Smith v. Chilton**. Certified questions. 90 T. 447 (39 S. W. 287).
- Smith v. Clay**, 57 S. W. 74. Application dismissed.
- Smith v. Cov. Mut. Ben. Assn. of Ill.**, 16 C. A. 593 (43 S. W. 819). Writ of error refused.
- Smith v. Crosby**, 22 S. W. 1042. On certificate of dissent. Affirmed. 86 T. 15 (23 S. W. 10).
- Smith v. Davis**, 18 C. A. 563 (47 S. W. 101). Application dismissed.
- Smith v. Estill**, 28 S. W. 801. Writ of error granted. Reversed and remanded. 87 T. 264.
- Smith v. Farmers L. & T. Co.**, 21 C. A. 170 (51 S. W. 515). Writ of error refused.
- Smith v. Grayson County**, 18 C. A. 153 (44 S. W. 921). Writ of error refused.
- Smith v. Horton**, 19 C. A. 28 (46 S. W. 401). Writ of error refused. 92 T. 21.
- Smith v. James**, 22 C. A. 154 (54 S. W. 41). Writ of error refused.
- Smith v. Ojerholm**, 51 S. W. 37. Writ of error refused. 93 T. 35.
- Smith v. Olsen**, 44 S. W. 874. Writ of error granted. Reversed and remanded. 92 T. 181.
- Smith v. Olson**, 56 S. W. 568. Writ of error refused.

- Smith v. Pate, 43 S. W. 312. Writ of error granted. Reversed and rendered. 91 T. 596.
- Smith v. Patrick, 36 S. W. 762. Writ of error granted. Reversed and remanded. 90 T. 267.
- Smith v. Patrick, 43 S. W. 535. Writ of error refused.
- Smith v. Richardson Lumber Co., 47 S. W. 386, 753. Writ of error granted. Reversed and remanded. 92 T. 448.
- Smith v. Roach, 51 S. W. 292. Writ of error refused (Laird v. Roach).
- Smith v. Russell, 56 S. W. 687. Writ of error refused.
- Smith v. Seymore, 1 T. C. R. 145. Writ of error refused. 59 S. W. 816.
- Smith v. Smith, 10 C. A. 485 (32 S. W. 28). Writ of error refused.
- Smith v. Swan, 2 C. A. 563 (22 S. W. 247). Writ of error refused.
- Smith v. Wilson, 18 C. A. 24 (44 S. W. 556). Application dismissed. 91 T. 503.
- Smith v. Wilson, 20 S. W. 1119. Application dismissed. 85 T. 402.
- Smith v. Wright, 13 C. A. 480 (36 S. W. 324). Writ of error refused.
- Smoot v. Richards, 16 C. A. 662 (39 S. W. 133). Writ of error refused.
- Sneed v. Falls County, 42 S. W. 121. Certified questions. 91 T. 168 (41 S. W. 481).
- Sneed v. Sellers (memorandum opinion, unpublished). Application dismissed.
- Snyder v. Compton, 29 S. W. 73. Certified questions. 87 T. 374 (28 S. W. 1061).
- South Tex. Natl. Bank v. La Grange Oil Mill Co., 40 S. W. 328. Writ of error refused.
- Southall v. Southall, 6 C. A. 694 (26 S. W. 150). Writ of error refused.
- Southard v. Green, 1 T. C. R. 196. Application granted. 50 S. W. 839; 61 S. W. 706.
- Southerland v. T. & P. Ry. Co., 40 S. W. 193. Writ of error refused.
- Southern Bldg. & L. Assn. v. Atkinson, 20 C. A. 516 (50 S. W. 170). Writ of error refused.
- Southern Bldg. & L. Assn. v. Bean, 49 S. W. 910. Writ of error refused.

- Southern Bldg. & L. Assn. v. Brackett, 39 S. W. 619. Writ of error granted. Reversed and remanded in part. 91 T. 44.
- Southern C. Oil Co. v. Wallace, 38 S. W. 1137. Writ of error granted. Reversed and remanded. 91 T. 18.
- Southern Kan. Ry. Co. v. Isaacs & Bro., 49 S. W. 690. Application dismissed.
- S. W. Inv. Co. v. Crawford, 16 C. A. 475 (41 S. W. 720). Writ of error refused.
- Southern Pac. Co. v. Bender, 57 S. W. 574. Writ of error refused.
- Southern Pac. Ry. Co. v. Haas, 21 S. W. 1021. Application dismissed. 85 T. 401 (20 S. W. 586).
- Southern Pac. Ry. Co. v. Mauldin, 19 C. A. 166 (46 S. W. 650). Application dismissed. 92 T. 267.
- Southern Pac. Ry. Co. v. Redding, 17 C. A. 440 (43 S. W. 1061). Writ of error refused.
- Southwestern Coal & Imp. Co. v. Rohr, 15 C. A. 404 (39 S. W. 1017). Writ of error refused.
- Southwestern Mfg. Co. v. Hughes, 1 T. C. R. 591. Writ of error refused. 60 S. W. 684.
- S. W. Tel. & T. Co. v. Crank, 27 S. W. 38. Writ of error granted. Affirmed. 87 T. 104.
- S. W. Tel. & T. Co. v. Dale, 27 S. W. 1059. Writ of error refused.
- S. W. Tel. & T. Co. v. Gotcher, 53 S. W. 686. Writ of error granted. Reversed and remanded. 93 T. 114.
- S. W. Tel. & T. Co. v. G. C. & S. F. Ry. Co. (no published opinion.) Writ of error granted. Dismissed by plaintiff in error.
- Sovereign Camp Woodmen of the World v. Fraley, 59 S. W. 905. Affirmed. 59 S. W. 880.
- Sovereign Camp Woodmen of the World v. Rothschild, 15 C. A. 463 (40 S. W. 553). Writ of error refused.
- Spalding v. Rust (no written opinion). Writ of error refused.
- Sparks v. Dockery (see Friedman v. Dockery).
- Spence v. Brown, 22 S. W. 983; 24 Id. 309. Writ of error granted. Reversed and remanded. 86 T. 430 (25 S. W. 413).
- Spencer v. Jones, 47 S. W. 29, 665. Writ of error granted. Reversed and remanded. 92 T. 516.

- Spofford v. Minor, 13 C. A. 534 (36 S. W. 771). Writ of error refused.
- Spradley v. State, 56 S. W. 114. Writ of error refused.
- S. S. & Mt. P. Ry. Co. v. St. L., A. & T. Ry. Co., 2 C. A. 650 (22 S. W. 107). Writ of error refused.
- Stacy v. Campbell, 45 S. W. 759. Application dismissed.
- Staley v. Hankla, 43 S. W. 20. Writ of error refused.
- Stalling v. Hullum, 33 S. W. 1033. Writ of error granted. Reversed and rendered. 89 T. 431.
- Standard Ins. Co. v. Willock, 29 S. W. 218. Application dismissed.
- Standart v. Vivion, 22 C. A. 142 (54 S. W. 44). Writ of error refused.
- Standeffer v. Wilson, 55 S. W. 1135. Writ of error refused. 93 T. 232 (54 S. W. 898).
- Stanley v. Hamilton, 33 S. W. 601. Writ of error refused.
- Stanley v. Warren (memorandum opinion June 14, 1893, apparently unpublished). Writ of error refused.
- Stark v. Homuth, 45 S. W. 761. Application dismissed.
- Starnes v. Beitel, 20 C. A. 524 (50 S. W. 202). Writ of error refused.
- State v. Austin, Club, 38 S. W. 596. Certified questions. 89 T. 20 (33 S. W. 113).
- State v. Austin & N. W. Ry. Co., 60 S. W. 886. Writ of error refused. 62 S. W. 1050.
- State v. Bledsoe (written opinion June 14, 1893, apparently unpublished). Writ of error refused.
- State v. Bronson, 61 S. W. 114. Certified questions.
- State v. Burnett, 1 T. C. R. 542. Writ of error refused. 59 S. W. 599.
- State v. Callaghan, 43 S. W. 1103. Certified questions. 91 T. 313 (43 S. W. 12).
- State v. Connor, 25 S. W. 815. Application dismissed. 86 T. 133.
- State v. Deaton, 52 S. W. 591. Writ of error granted. Reversed and rendered. 93 T. 243.
- State v. Ellis, 20 S. W. 66; 24 Id. 660. Writ of error refused.
- State v. Farmer, 57 S. W. 84. Writ of error granted. Affirmed. 59 S. W. 541.
- State v. G. C. & S. F. Ry. Co., 44 S. W. 542. Writ of error refused.

- State v. Hanscom**, 37 S. W. 453, 601. Writ of error refused. 38 S. W. 761.
- State v. Harvey**, 11 C. A. 691 (33 S. W. 885). Writ of error refused.
- State v. Hoff**, 29 S. W. 672. Writ of error granted. Affirmed. 88 T. 297 (31 S. W. 290).
- State v. Hutchings**, 11 C. A. 316 (32 S. W. 315). Writ of error refused.
- State v. I. & G. N. Ry. Co.** Certified questions. 89 T. 562 (35 S. W. 1067).
- State v. McAllister**, 31 S. W. 679. Certified questions. 88 T. 284 (31 S. W. 187).
- State v. McKay** (see *McKay v. State*).
- State v. Morwood**, 57 S. W. 875. Writ of error refused.
- State ex rel. Perrin v. Hoard**, 62 S. W. 1055. Certified questions.
- State v. Rigsby**, 17 C. A. 171 (43 S. W. 271). Writ of error refused. 91 T. 351.
- State v. San Antonio St. Ry. Co.**, 30 S. W. 266. Application dismissed.
- State v. Schueneman**, 18 C. A. 485 (46 S. W. 260). Writ of error refused.
- State v. Thompson**, 10 C. A. 272 (30 S. W. 728). Application dismissed. 88 T. 228.
- State v. Travis County** (see *Travis County v. Christian, State, intervener*).
- State v. Vinson**, 5 C. A. 315 (23 S. W. 807). Writ of error refused.
- State v. Woodville**, 18 C. A. 217 (35 S. W. 861). Writ of error refused.
- State v. Wofford**. Certified questions. 90 T. 514 (39 S. W. 921).
- State v. Zanco**, 18 C. A. 127 (44 S. W. 527). Writ of error refused.
- State Natl. Bank v. Fink**, 24 S. W. 937. Certified questions. 86 T. 303 (24 S. W. 256).
- Steffens v. Jackson**, 16 C. A. 280 (41 S. W. 520). Writ of error refused.
- Steger v. Davis**, 8 C. A. 23 (27 S. W. 1068). Writ of error refused.
- Steiner v. Jester**, 23 S. W. 718. Writ of error granted. Reversed and remanded. 86 T. 415.

- Steinwender v. Marshall (see Bank of California v. Marshall).
- Stephens v. Anderson, 36 S. W. 1000. Writ of error refused.
- Stephens v. Moodie, 30 S. W. 490. Writ of error refused.
- Stephens v. Summerfield, 22 C. A. 182 (54 S. W. 188).
Writ of error refused.
- Stephens v. Wallace, 10 C. A. 44 (30 S. W. 1099). Writ of error refused.
- Stephenson v. Stephenson, 22 S. W. 150; 6 C. A. 529 (25 S. W. 649). Writ of error refused.
- Stephenson Co. Judge v. Union Seating Co., 1 T. C. R. 95.
Writ of error refused. 62 S. W. 128.
- Stephenson v. Yeargan, 17 C. A. 111 (42 S. W. 626). Writ of error refused.
- Stern v. Marx, 56 S. W. 93. Writ of error refused.
- Stevens v. Germania Life Ins. Co., 1 T. C. R. 592. Writ of error refused. 62 S. W. 824.
- Stevens v. Stone, 1 T. C. R. 293. Application granted. 59 S. W. 1122. Reversed. 60 S. W. 959.
- Stewart v. Crosby, 26 S. W. 651 (see Nichols-Stewart v. Crosby).
- Stewart v. Crosby, 56 S. W. 433. Writ of error refused.
- Stewart v. Purvis, 20 C. A. 647. Writ of error refused.
- Stiff v. Fisher, 21 S. W. 291. Certified questions. 85 T. 556 (22 S. W. 577).
- Still v. Lombardi, 8 C. A. 315 (27 S. W. 845). Writ of error refused.
- Stoker v. Patton, 35 S. W. 64. Writ of error refused.
- Stokes v. Mustain, 44 S. W. 404. Writ of error refused.
- Stone v. Ellis, 13 C. A. 291 (40 S. W. 1077). Writ of error refused.
- Stone v. Sledge, 24 S. W. 697. Writ of error granted. Affirmed and judgment of district court reversed and remanded. 87 T. 49.
- Stone v. Stone, 18 C. A. 80 (40 S. W. 1022). Application dismissed.
- Stooksbury v. Swan, 21 S. W. 694. On certificate of dissent. Majority opinion affirmed. 85 T. 563.
- Stooksbury v. Swan, 34 S. W. 369. Writ of error refused.
- Storrie v. Cortez, 39 S. W. 607. Certified questions. 90 T. 283 (38 S. W. 154).
- Storrie v. Hamilton, 42 S. W. 235. Writ of error refused.

- Storrie v. Woessner, 47 S. W. 837. Writ of error granted.
Affirmed. 51 S. W. 1132.
- Story v. Birdwell, 45 S. W. 847. Writ of error refused.
- Story v. Jones, 16 C. A. 60 (40 S. W. 417). Writ of error refused.
- Stovall v. Odell, 10 C. A. 169 (30 S. W. 66). Writ of error refused.
- Strain v. Walton, 11 C. A. 624 (34 S. W. 293). Writ of error refused.
- Strang v. Pray, 34 S. W. 666. Writ of error granted.
Affirmed. 89 T. 525.
- Stuart v. Aultman, 37 S. W. 867. Writ of error refused.
- Stuart v. Tenison Bros. Sad. Co., 21 C. A. 530 (53 S. W. 83). Writ of error refused.
- Stubblefield v. Stubblefield, 45 S. W. 965. Writ of error refused.
- Studebaker Bros. v. First Natl. Bank of Sulphur Spr., 42 S. W. 573. Writ of error refused.
- Studebaker Bros. v. Hunt, 38 S. W. 1134. Writ of error refused.
- Sturgis v. Moore, (35 S. W. 56). Writ of error refused.
- Sturgis Natl. Bank v. Smith, 30 S. W. 678. Application dismissed. 87 T. 649.
- Sugarman v. U. P. Ry. Co., 41 S. W. 1103. Writ of error refused.
- Sullivan v. Cranz, 21 C. A. 498 (52 S. W. 272). Writ of error refused.
- Sullivan v. Creamer, 50 S. W. 431. Writ of error refused.
- Sullivan v. Crouch, 10 C. A. 404 (32 S. W. 144). Writ of error refused.
- Sullivan v. Hartford Ins. Co., 34 S. W. 999. Application dismissed. 89 T. 665.
- Sullivan v. Kalteyer, 46 S. W. 288. Writ of error refused.
- Sullivan v. Miller, 24 S. W. 819; 26 S. W. 1106, 935. Certified questions. 86 T. 677.
- Sullivan v. Texas Briquette & Coal Co., 1 T. C. R. 397. Application granted. 60 S. W. 330. Reversed. 63 S. W. 307.
- Sullivan v. Zanderson, 42 S. W. 1027. Writ of error granted.
Affirmed. 91 T. 499.
- Sulphur Lumber Co. v. Kelley, 30 S. W. 696. Writ of error refused.

- Sulphur Springs & Mt. P. Ry. Co. v. St. L. A. & T. Ry. Co.**, 2 C. A. 650 (22 S. W. 107). Writ of error refused.
- Summerhill v. Darrow** (no published opinion). Writ of error granted. Affirmed. 57 S. W. 942; 62 S. W. 1054.
- Sumner v. Crawford**, 41 S. W. 825. Writ of error granted. Affirmed. 91 T. 129.
- Sun Ins. Office v. Beneke**, 53 S. W. 98. Writ of error refused.
- Sun Mut. Ins. Co. v. Tufts**, 20 C. A. 147 (50 S. W. 180). Writ of error refused.
- Sun Vapor Electric L. Co. v. Kenan**, 31 S. W. 318. Certified questions. 88 T. 197 (30 S. W. 868).
- Supreme Lodge K. of H. v. Rumpy**, 45 S. W. 422. Writ of error refused.
- Supreme Lodge Natl Res. Assn. v. Moreland** (no written opinion). Writ of error refused.
- Sutherland v. Elmendorf**, 57 S. W. 890. Writ of error refused.
- Sutton v. Gregory**, 45 S. W. 932. Writ of error refused.
- Sutton v. Simon**. Certified questions. 91 T. 638 (45 S. W. 559).
- Swan v. Larkin**, 28 S. W. 217; 35 S. W. 296. Writ of error refused.
- Swartz v. State**, 26 S. W. 869. Writ of error refused. 87 T. 246 (see 28 S. W. 272).
- Swayne v. Chase**, 29 S. W. 418. Writ of error granted. Reversed and judgment of district court affirmed. 88 T. 218 (30 S. W. 1049).
- Swayne v. Mut. Life Ins. Co.**, 92 T. 575 (50 S. W. 566). Certified questions. 49 S. W. (C. A.) 518.
- Swayne v. Terrell**, 20 C. A. 31 (48 S. W. 128). Writ of error refused.
- Sweeny v. El Paso B. & L. Assn.**, 26 S. W. 290. Writ of error refused.
- Swenson v. Heidenheimer**, 52 S. W. 989. Application dismissed.
- Swenson v. Seale**, 28 S. W. 143. Writ of error refused.
- Swenson v. Smith County**, 33 S. W. 909. Writ of error granted. Reversed and remanded. 89 T. 556.
- Swenson v. State**, 28 S. W. 143. Writ of error refused.
- Swope v. Missouri Trust Co.**, 1 T. C. R. 600. Writ of error refused. 62 S. W. 947.

- Taber v. Chapman, 47 S. W. 710. Certified questions. 21 C. A. 366 (50 S. W. 1035).
- Taber v. International Bldg. & Loan Assn. Certified questions. 91 T. 92 (40 S. W. 954).
- Tackaberry v. City Natl. Bank, 22 S. W. 121. Writ of error granted. Affirmed. 85 T. 488 (22 S. W. 151).
- Talbot & Sons v. Planters, Oil Co., 33 S. W. 745. Writ of error refused.
- Talley v. Moseley (no written opinion). Writ of error refused.
- Tarrant County A. M. & B. S. Assn. v. Kit, 10 C. A. 685 (31 S. W. 1080). Writ of error refused.
- Tarver v. Ld. Mtg. Bk. of Texas, 7 C. A. 425 (27 S. W. 40). Writ of error refused.
- Taylor v. Bewley, 93 T. 524 (56 S. W. 746). Certified questions. 56 S. W. (C. A.) 937.
- Taylor v. Callaway, 27 S. W. 934. Application dismissed.
- Taylor v. Carson, 47 S. W. 395. Writ of error refused.
- Taylor v. Evans, 16 C. A. 409 (41 S. W. 877). Writ of error refused.
- Taylor v. Ferguson (written opinion, November 29, 1893, apparently unpublished). Writ of error granted. Reversed and remanded. 87 T. 1.
- Taylor v. Stephens, 17 C. A. 36 (42 S. W. 1048). Writ of error refused.
- Taylor v. St. Louis Type Foundry, 21 C. A. 69 (51 S. W. 304). Writ of error refused.
- Taylor v. Taul, 21 S. W. 1085. Writ of error granted. Affirmed. 88 T. 665.
- Taylor v. Taylor, 26 S. W. 889. Writ of error granted. Affirmed in part and in part reversed and remanded. 88 T. 47 (29 S. W. 1057).
- Taylor v. Travelers Ins. Co., 15 C. A. 254 (39 S. W. 185). Writ of error refused.
- Taylor, B. & H. Ry. Co. v. Warner, 31 S. W. 66. Writ of error granted. Reversed and remanded. 88 T. 642.
- Telschow v. House, 10 C. A. 671 (32 S. W. 153). Writ of error refused.
- Tempel v. Dodge, 31 S. W. 686. Writ of error refused. 89 T. 68.

- Temple Natl. Bank v. Warner**, 44 S. W. 1025. Writ of error granted. Reversed and remanded. 92 T. 226.
- Templeman v. Gibbs**, 25 S. W. 376. Certified questions. 86 T. 358 (24 S. W. 792).
- Templeman v. Hutchings, Sealy & Co.**, 57 S. W. 868. Writ of error refused.
- Templeman v. Texas Brew. Co.**, 35 S. W. 935. Writ of error granted. Affirmed and rendered. 90 T. 277.
- Tennant v. Fawcett**, 55 S. W. 611. Writ of error granted. Reversed. 58 S. W. 824.
- Tenney v. B. W. & B. Hat Co.**, 17 C. A. 144 (43 S. W. 296). Writ of error refused.
- Tennille v. Morgan**, 35 S. W. 514. Writ of error refused.
- Terrell v. Brown** (no written opinion). Application dismissed.
- Terrell v. Morrow** (see *Morrow v. Terrell*).
- Terrell v. Russell**, 16 C. A. 573 (42 S. W. 129). Writ of error refused.
- Terry v. Cutler**, 4 C. A. 570 (21 S. W. 726; 23 Id. 539). Application dismissed.
- Terry v. Cutler**, 14 C. A. 520 (39 S. W. 152). Writ of error refused.
- Texarkana Natl. Bank v. Hall**, 30 S. W. 73. Writ of error refused.
- Texarkana & Ft. S. Ry. Co. v. Bulgier**, 47 S. W. 1047. Application dismissed.
- Texarkana & Ft. S. Ry. Co. v. Hartford Ins. Co.**, 17 C. A. 498 (44 S. W. 533). Writ of error refused.
- Texarkana & Ft. S. Ry. Co. v. O'Kelleher**, 21 C. A. 96 (51 S. W. 54). Writ of error refused.
- Texas Brewing Co. v. Anderson**, 40 S. W. 737. Writ of error refused.
- Texas Brewing Co. v. Dickey**, 20 C. A. 606 (49 S. W. 935). Writ of error refused.
- Texas Brewing Co. v. Durrum**, 46 S. W. 880. Writ of error refused.
- Texas B. & H. Ry. Co. v. Warner**, 1 T. C. R. 260. Writ of error refused. 60 S. W. 442.
- Texas Builders Supply Co. v. Natl. Loan & Inv. Co.**, 22 C. A. 349 (54 S. W. 1059). Writ of error refused.
- Texas Cent. Ry. Co. v. Brock**, 30 S. W. 274. Writ of error granted. Reversed and remanded. 88 T. 310.

- Texas Cent. Ry. Co. v. Fox, 1 T. C. R. 43. Writ of error refused. 59 S. W. 49.
- Texas Cent. Ry. Co. v. Frazier, 34 S. W. 664. Writ of error granted. Reversed and remanded. 90 T. 33.
- Texas Cent. Ry. Co. v. Stuart, 1 C. A. 642 (20 S. W. 962). Writ of error refused.
- Texas Consol. Compr. Mfg. Assn. v. Paddock (no written opinion). Writ of error refused.
- Texas Drug Co. v. Baker, 20 C. A. 684 (50 S. W. 157). Writ of error refused.
- Texas El. & Comp. Cp. v. Mitchell, 7 C. A. 222 (28 S. W. 45). Writ of error refused.
- Texas & Ft. S. Ry. Co. v. Preacher, 1 T. C. R. 131. Writ of error refused. 59 S. W. 593.
- Texas Ld. & Im. Co. v. Masterson, 11 C. A. 483 (33 S. W. 376). Writ of error refused.
- Texas Ld. & Loan Co. v. Winter, 54 S. W. 802. Writ of error granted. Reversed and judgment district court affirmed. 57 S. W. 39.
- Texas Ld. Mtg. Co. v. State, 1 C. A. 616 (23 S. W. 258). Writ of error refused.
- Texas Loan Agency v. Fleming, 18 C. A. 668 (46 S. W. 63). Writ of error granted. Reversed and remanded. 92 T. 458.
- Texas Loan Agency v. Gray, 34 S. W. 650. Writ of error refused.
- Texas Loan Agency v. Miller, —. Writ of error granted. Reversed. 61 S. W. 477.
- Texas Mex. Ry. Co. v. Cahill, 23 S. W. 232. Writ of error refused.
- Texas Mex. Ry. Co. v. Wright, 29 S. W. 1134. Writ of error granted. Affirmed. 88 T. 346.
- Texas Midland R. R. v. Brown, 58 S. W. 44. Writ of error refused.
- Texas Midland R. R. v. Johnson, 50 S. W. 1044. Writ of error refused.
- Texas Midland Ry. Co. v. Johnson, 20 C. A. 572 (50 S. W. 1044). Writ of error refused.
- Texas Midland R. R. v. Taylor, 53 S. W. 362. Writ of error refused.
- Texas & N. O. Ry. Co. v. Bingle, 16 C. A. 653 (41 S. W. 90). Writ of error refused. 91 T. 287.

- Texas & N. O. Ry. Co. v. Black**, 44 S. W. 673. Writ of error refused.
- Texas & N. O. Ry. Co. v. Brown**, 2 C. A. 281 (21 S. W. 424). Writ of error refused.
- Texas & N. O. Ry. Co. v. Brown**, 14 C. A. 697 (39 S. W. 140). Writ of error refused.
- Texas & N. O. Ry. Co. v. Carr**, 42 S. W. 126. Writ of error granted. Judgment rendered on remittitur. 91 T. 332.
- Texas & N. O. Ry. Co. v. Demilley**, 41 S. W. 147. Writ of error granted. Affirmed and rendered. 91 T. 215.
- Texas & N. O. Ry. Co. v. Echols**, 25 S. W. 1087. Writ of error granted. Reversed and remanded. 87 T. 339.
- Texas & N. O. Ry. Co. v. Echols**, 17 C. A. 677 (41 S. W. 488). Writ of error refused.
- Texas & N. O. Ry. Co. v. Hare**, 4 C. A. 18 (23 S. W. 42). Writ of error refused.
- Texas & N. O. Ry. Co. v. McKee**, 9 C. A. 100 (29 S. W. 544). Writ of error refused.
- Texas & N. O. Ry. Co. v. Powell**, 13 C. A. 212 (35 S. W. 841). Application dismissed. 89 T. 663.
- Texas & N. O. Ry. Co. v. Speights**, 59 S. W. 572. Reversed. 60 S. W. 659.
- Texas & N. O. Ry. Co. v. Syfan**, 43 S. W. 551. Writ of error granted. Affirmed. 91 T. 562.
- Texas & N. O. Ry. Co. v. Tatman**, 10 C. A. 434 (31 S. W. 333). Application dismissed.
- Texas & N. O. Ry. Co. v. Wynne**, 22 S. W. 1064. Writ of error refused.
- Texas & Pac. Coal Co. v. Connaughton**, 20 C. A. 642 (50 S. W. 173). Writ of error refused.
- Texas & Pac. Coal Co. v. Lawson**, 10 C. A. 491 (31 S. W. 843). Writ of error granted. Reversed and remanded. 89 T. 394.
- Texas & P. Ry. Co. v. Armstrong**, 53 S. W. 1119. Writ of error refused. 93 T. 31 (51 S. W. 835).
- Texas & P. Ry. Co. v. Avery**, 19 C. A. 235 (46 S. W. 897). Writ of error refused.
- Texas & P. Ry. Co. v. Bagwell**, 3 C. A. 256 (22 S. W. 829). Writ of error refused.
- Texas & Pac. Ry. Co. v. Barrett**, 57 S. W. 602. Writ of error refused.

- Texas & P. Ry. Co. v. Beckworth**, 11 C. A. 153 (32 S. W. 347, 809). Writ of error refused.
- Texas & P. Ry. Co. v. Berchfield**, 19 C. A. 228 (46 S. W. 900). Writ of error refused.
- Texas & P. Ry. Co. v. Bigham**, 36 S. W. 1111. Writ of error granted. Reversed and remanded. 90 T. 223.
- Texas & P. Ry. Co. v. Bigham**, 47 S. W. 814. Writ of error refused.
- Texas & P. Ry. Co. v. Black**, 57 S. W. 330. Writ of error refused.
- Texas & P. Ry. Co. v. Black**, 27 S. W. 118. Writ of error granted. Reversed and remanded. 87 T. 160.
- Texas & P. Ry. Co. v. Born**, 20 C. A. 351 (50 S. W. 613). Writ of error refused.
- Texas & P. Ry. Co. v. Bowlin**, 32 S. W. 918. Writ of error refused.
- Texas & P. Ry. Co. v. Boyd**, 6 C. A. 205 (24 S. W. 1086). Application dismissed.
- Texas & P. Ry. Co. v. Breadow**, 19 C. A. 483 (47 S. W. 816). Writ of error refused.
- Texas & P. Ry. Co. v. Breadow**, 35 S. W. 490. Writ of error granted. Reversed and remanded. 90 T. 26.
- Texas & P. Ry. Co. v. Brown**, 11 C. A. 503 (33 S. W. 146). Writ of error refused.
- Texas & P. Ry. Co. v. Burton**, 30 S. W. 491. Writ of error refused.
- Texas & P. Ry. Co. v. Caplea**, 36 S. W. 516. Writ of error refused.
- Texas & P. Ry. Co. v. Cornelius**, 10 C. A. 125 (30 S. W. 720). Writ of error refused.
- Texas & P. Ry. Co. v. Crow**, 3 C. A. 266 (22 S. W. 928). Writ of error refused.
- Texas & P. Ry. Co. v. Crow**, 40 S. W. 510. Writ of error refused.
- Texas & P. Ry. Co. v. Cumpston**, 4 C. A. 25 (23 S. W. 47). Application dismissed.
- Texas & P. Ry. Co. v. Cumpston**, 15 C. A. 493 (40 S. W. 546). Writ of error refused.
- Texas & P. Ry. Co. v. Curlin**, 13 C. A. 505 (36 S. W. 1003). Writ of error refused.
- Texas & P. Ry. Co. v. Davis**, 54 S. W. 381. Writ of error granted. Reversed and remanded. 93 T. 378.

- Texas & P. Ry. Co. v. Dennis, 4 C. A. 90 (23 S. W. 400).
Writ of error refused.
- Texas & P. Ry. Co. v. Donovan & Co., 23 S. W. 735. Writ of error granted. Affirmed. 86 T. 378 (25 S. W. 10).
- Texas & P. Ry. Co. v. Easton, 2 C. A. 378 (21 S. W. 575).
Writ of error refused.
- Texas & P. Ry. Co. v. Eberheart, 40 S. W. 1060. Writ of error granted. Affirmed. 91 T. 321.
- Texas & P. Ry. Co. v. Ford, 9 C. A. 557 (30 S. W. 372).
Writ of error refused.
- Texas & P. Ry. Co. v. Ford, 42 S. W. 589. Writ of error refused.
- Texas & P. Ry. Co. v. French, 22 S. W. 866. Writ of error granted. Reversed and remanded. 86 T. 96 (23 S. W. 642).
- Texas & P. Ry. Co. v. Fuller, 13 C. A. 151 (36 S. W. 319).
Writ of error refused.
- Texas & P. Ry. Co. v. Fuller, 5 C. A. 660 (24 S. W. 1090).
Application dismissed.
- Texas & P. Ry. Co. v. Gale, 35 S. W. 802. Writ of error refused.
- Texas & P. Ry. Co. v. Gaal, 14 C. A. 459 (37 S. W. 462).
Writ of error refused.
- Texas & P. Ry. Co. v. Gay, 27 S. W. 742. Writ of error granted. Affirmed. 88 T. 111 (30 S. W. 543).
- Texas & P. Ry. Co. v. Gay, 38 S. W. 533. Writ of error refused.
- Texas & P. Ry. Co. v. Gilliland, 36 S. W. 1134. Writ of error refused.
- Texas & P. Ry. Co. v. Gorman, 2 C. A. 144 (21 S. W. 158).
Writ of error refused.
- Texas & P. Ry. Co. v. Gott, 20 C. A. 335 (50 S. W. 193).
Writ of error refused.
- Texas & P. Ry. Co. v. Hall, 17 C. A. 45 (43 S. W. 25). Writ of error refused.
- Texas & P. Ry. Co. v. Hohn, 1 C. A. 36 (21 S. W. 942).
Writ of error refused.
- Texas & P. Ry. Co. v. Hornbeck. Certified questions. 90 T. 496 (39 S. W. 564).
- Texas & P. Ry. Co. v. Hudman, 8 C. A. 309 (28 S. W. 388). Writ of error refused.

- Texas & P. Ry. Co. v. Humphries, 20 C. A. 28 (48 S. W. 201). Writ of error refused.
- Texas & P. Ry. Co. v. Johnson, 34 S. W. 186. On certificate of dissent. Reversed. 89 T. 519.
- Texas & P. Ry. Co. v. Johnson, 14 C. A. 566 (37 S. W. 973). Writ of error refused. 90 T. 304.
- Texas & P. Ry. Co. v. Jones, 39 S. W. 124. Writ of error refused.
- Texas & P. Ry. Co. v. Kenna, 52 S. W. 555. Writ of error refused.
- Texas & P. Ry. Co. v. Lancaster, 30 S. W. 490. Writ of error refused.
- Texas & P. Ry. Co. v. Langsdale, 30 S. W. 681. Application dismissed.
- Texas & P. Ry. Co. v. Lavery, 4 C. A. 74 (22 S. W. 1047). Writ of error refused.
- Texas & P. Ry. Co. v. Leighty, 32 S. W. 799. Writ of error granted. Affirmed. 88 T. 604.
- Texas & P. Ry. Co. v. Lee, 21 C. A. 174 (51 S. W. 351). Writ of error refused.
- Texas & P. Ry. Co. v. Levine, 29 S. W. 514. Writ of error refused. 87 T. 437.
- Texas & P. Ry. Co. v. Lively, 14 C. A. 554 (38 S. W. 370). Writ of error refused.
- Texas & P. Ry. Co. v. Ludlam, 26 S. W. 430. Writ of error refused.
- Texas & P. Ry. Co. v. Lyons, 50 S. W. 161. Writ of error refused.
- Texas & P. Ry. Co. v. McCoy, 17 C. A. 494 (44 S. W. 25). Writ of error refused.
- Texas & P. Ry. Co. v. McCoy (no published opinion. See 3 C. A. 276 (22 S. W. 926; 31 Id. 304; 44 Id. 25). But neither of these is the judgment here reversed). Writ of error granted. Reversed and remanded. 90 T. 264.
- Texas & P. Ry. Co. v. McGilvary, 29 S. W. 67. Application dismissed.
- Texas & P. Ry. Co. v. Magrill, 15 C. A. 353 (40 S. W. 188). Writ of error refused.
- Texas & P. Ry. Co. v. McLane, 32 S. W. 776. Writ of error refused.
- Texas & Pac. Ry. Co. v. McLane, 1 T. C. R. 303. Writ of error refused.

- Texas & P. Ry. Co. v. Malone, 15 C. A. 56 (38 S. W. 538).
Writ of error refused.
- Texas & P. Ry. Co. v. Mayfield, 56 S. W. 942. Writ of
error refused.
- Texas & P. Ry. Co. v. Maynard, 51 S. W. 255. Writ of
error refused.
- Texas & P. Ry. Co. v. Moore, 43 S. W. 67. Writ of error
refused.
- Texas & P. Ry. Co. v. Morrison, Faust Co., 20 C. A. 144
(48 S. W. 1103). Writ of error refused.
- Texas & P. Ry. Co. v. Moseley, 58 S. W. 48. Writ of error
refused.
- Texas & P. Ry. Co. v. Mother, 5 C. A. 87 (24 S. W. 79).
Writ of error refused.
- Texas & P. Ry. Co. v. Neill, 30 S. W. 369. Writ of error
refused.
- Texas & P. Ry. Co. v. Nelson, 9 C. A. 156 (29 S. W. 78).
Writ of error refused.
- Texas & P. Ry. Co. v. Nix, 23 S. W. 328. Writ of error
refused.
- Texas & P. Ry. Co. v. O'Mahoney, 1 T. C. R. 680. Writ of
error refused. 60 S. W. 902.
- Texas & P. Ry. Co. v. Orr, 31 S. W. 696. Writ of error
refused.
- Texas & P. Ry. Co. v. Padgett, 36 S. W. 300. Writ of
error refused.
- Texas & P. Ry. Co. v. Phillips, 40 S. W. 344. Writ of error
granted. Reversed and remanded. 91 T. 278.
- Texas & P. Ry. Co. v. Phillips, 37 S. W. 620. Writ of error
refused.
- Texas & P. Ry. Co. v. Pyron (no published opinion). Writ
of error refused.
- Texas & P. Ry. Co. v. Raney, 23 S. W. 340. Writ of error
granted. Affirmed. 86 T. 373.
- Texas & P. Ry. Co. v. Reed, 32 S. W. 118. Writ of error
granted. Reversed and remanded. 88 T. 439.
- Texas & P. Ry. Co. v. Reeves, 15 C. A. 157 (39 S. W. 135).
Writ of error refused. 90 T. 499.
- Texas & P. Ry. Co. v. Rice Bros., 1 T. C. R. 44. Writ of
error refused. 59 S. W. 833.
- Texas & P. Ry. Co. v. Richmond & Tiffany, 1 T. C. R. 162.
Application granted. 63 S. W. 619.

- Texas & P. Ry. Co. v. Roberts**, 20 S. W. 960; 37 S. W. 870; 45 S. W. 218. Writ of error granted. Affirmed. 91 T. 535.
- Texas & P. Ry. Co. v. Robertson**, 35 S. W. 505. Writ of error refused.
- Texas & P. Ry. Co. v. Robinson**, 4 C. A. 121 (23 S. W. 433). Writ of error refused.
- Texas & P. Ry. Co. v. Ross**, 7 C. A. 653 (27 S. W. 728). Writ of error refused.
- Texas & P. Ry. Co. v. Scharbauer**, 52 S. W. 589. Writ of error refused.
- Texas & P. Ry. Co. v. Scharbauer**, 52 S. W. 590. Writ of error refused.
- Texas & Pac. Ry. Co. v. Scruggs**, 58 S. W. 186. Writ of error refused.
- Texas & P. Ry. Co. v. Sherbert**, 42 S. W. 639. Writ of error refused.
- Texas & P. Ry. Co. v. Staggs**, 37 S. W. 609. Certificate of dissent. Majority opinion affirmed. 90 T. 256, 458.
- Texas & P. Ry. Co. v. Tom Green County Cattle Co.**, 15 C. A. 147 (38 S. W. 1138). Writ of error refused.
- Texas & P. Ry. Co. v. Truesdell**, 21 C. A. 125 (51 S. W. 272). Writ of error refused.
- Texas & P. Ry. Co. v. Vaughan**, 16 C. A. 403 (40 S. W. 1065). Writ of error refused.
- Texas & P. Ry. Co. v. Walker**, 57 S. W. 568. Certified questions. 93 T. 611.
- Texas & P. Ry. Co. v. Watkins**, 26 S. W. 760. Writ of error granted. Affirmed. 88 T. 20.
- Texas & P. Ry. Co. v. Wilson**, 85 T. 507 (21 S. W. 373). Writ of error refused.
- Texas & P. Ry. Co. v. Winder**, 31 S. W. 715. Writ of error refused.
- Texas Produce Co. v. Turner**, 7 C. A. 208 (26 S. W. 917). Writ of error refused.
- Texas S. & V. Co. v. Banker**, 1 T. C. R. 199. Writ of error refused. 61 S. W. 724.
- Texas Savings & L. Assn. v. Seitzler**, 12 C. A. 551 (34 S. W. 348). Writ of error refused.
- Texas S. V. & N. W. Ry. Co. v. Guy**, 23 S. W. 633. Writ of error refused.

Texas Tel. & T. Co. v. Seiders, 9 C. A. 431 (29 S. W. 258).

Writ of error refused.

Texas Trunk Line v. Hall, 24 S. W. 324. Writ of error refused.

Texas Trunk Line Ry. Co. v. Jackson. Certified questions. 85 T. 605 (22 S. W. 1030).

Texas Trunk Line Ry. Co. v. Johnson, 25 S. W. 740. Writ of error granted. Affirmed. 86 T. 421.

Thaxton v. Smith, 38 S. W. 820. Writ of error granted. Reversed and rendered. 90 T. 589.

Thayer v. Wathen, 17 C. A. 382. Writ of error refused.

Thomas v. Beer, 34 S. W. —. Writ of error refused.

Thomas v. Hawpe, 1 T. C. R. 495. Writ of error refused. 62 S. W. 785.

Thomas v. Morrison, 46 S. W. 46. Writ of error granted. Reversed and remanded in part. 92 T. 329.

Thomas v. Western U. Tel. Co., 1 T. C. R. 133 (61 S. W. 505).

Thompson v. Autrey, 57 S. W. 47. Writ of error refused.

Thompson v. Caruthers, 51 S. W. 1093. Writ of error refused. 92 T. 530 (50 S. W. 331).

Thompson v. Kimbrough, 57 S. W. 328. Writ of error refused.

Thompson v. Langdon, 28 S. W. 931. Writ of error granted. Reversed and rendered. 87 T. 254.

Thompson v. Vogel (see Moore v. Vogel).

Thomson v. Schackleford, 6 C. A. 121 (24 S. W. 980). Writ of error refused.

Thornburgh v. City of Tyler, 16 C. A. 439 (43 S. W. 1054). Writ of error refused.

Thornton v. Moody, 24 S. W. 331. Writ of error refused.

Thornton v. Zea, 22 C. A. 509 (55 S. W. 798). Writ of error refused.

Thornton v. Zea, 55 S. W. 798. Writ of error refused.

Thorp v. Gordon, 43 S. W. 323. Writ of error refused.

Threadgill v. Bickerstaff, 26 S. W. 739. Writ of error granted. Affirmed. 87 T. 520 (29 S. W. 757).

Throckmorton v. M., K. & T. Ry. Co., 14 C. A. 222 (39 S. W. 174). Writ of error refused.

Tian v. Lloyd, 21 C. A. 433 (52 S. W. 982). Writ of error refused.

- Tinsley v. Dowell, 24 S. W. 928. Writ of error granted. Reversed and remanded. 87 T. 23.
- Tinsley v. Foster, 25 S. W. 298. Writ of error refused.
- Tinsley v. Houston Ld. & Tr. Co., 36 S. W. 815. Writ of error refused.
- Tinsley v. Penniman, 8 C. A. 495 (29 S. W. 175). Writ of error refused.
- Tittle v. Vanleer, 27 S. W. 736. Writ of error granted. Reversed and remanded. 89 T. 174.
- Tombler v. Palestine Ice Co., 17 C. A. 596 (43 S. W. 896). Writ of error refused.
- Tomkins v. Broocks, 43 S. W. 70. Writ of error refused.
- Tomkins, D. A. Co. v. Galveston City St. Ry. So., 4 C. A. 1 (23 S. W. 25). Writ of error refused. (See 26 S. W. 774).
- Tompkins v. McKinney, 93 T. 629 (57 S. W. 804). Certified questions. 58 S. W. (C. A.). 1134.
- Town v. Guerguin, 57 S. W. 565. Certified questions. 93 T. 608.
- Toyaho Creek Ir. Co. v. Hutchens, 21 C. A. 274 (51 S. W. 101). Writ of error refused.
- Traders Natl. Bank v. Day, 27 S. W. 264. Certified questions. 87 T. 101 (26 S. W. 1049).
- Travis County v. Christian (State, intervener), 21 S. W. 119. Writ of error granted. Reversed. 85 T. 435 (21 S. W. 1029).
- Travis County v. Trogdon, 29 S. W. 405. Writ of error granted. Modified and affirmed. 88 T. 302.
- Traylor v. State, 19 C. A. 86 (46 S. W. 81). Writ of error refused.
- Trezevant v. Rains, 25 S. W. 1092. Writ of error refused.
- Trinity County Lumber Co. v. Denham, 29 S. W. 553. Writ of error granted. Reversed and remanded. 88 T. 203.
- Trinity County Lumber Co. v. Pinckard, 4 C. A. 671 (23 S. W. 720, 1015). Writ of error refused.
- Triplett v. Morris, 18 C. A. 50 (44 S. W. 684). Application dismissed.
- Trustees Lytle School Dist. v. Haas, 1 T. C. R. 293. Dismissed. 59 S. W. 830.
- Trustees Union Bapt. Assn. v. Huhn, 7 C. A. 249 (26 S. W. 755). Writ of error refused.

- Turner v. Clark, 18 C. A. 606 (46 S. W. 381). Writ of error refused.
- Turner v. Cochran, 61 S. W. 923. Certified questions. 63 S. W. (C. A.) 151.
- Turner v. Crane, 19 C. A. 369 (47 S. W. 822). Writ of error refused.
- Tunstall v. Clifton, 49 S. W. 244. Writ of error refused.
- Tyler B. & L. Ass'n v. Forse, 1 T. C. R. 147. Writ of error refused. 59 S. W. 818.
- Tyler C. & F. W. v. St. L. S. W. Ry. Co. of Texas, 55 S. W. 350; 56 I. d. 432. Writ of error refused.
- Tyler S. E. Ry. Co. v. McMahon, 34 S. W. 769. Writ of error refused.
- Tyler S. E. Ry. Co. v. Raspberry, 13 C. A. 185 (34 S. W. 794). Writ of error refused.
- Tyler S. E. Ry. Co. v. Wheeler, 41 S. W. 517. Writ of error granted. Affirmed on remittitur. 91 T. 356.
- Tynan v. Dullnig, 25 S. W. 465, 818. Application dismissed.
- Tynberg v. Cohen, 32 S. W. 157. Writ of error refused.
- Union Cent. Life Ins. Co. v. Chowning, 28 S. W. 117. Certified questions. 86 T. 654 (26 S. W. 982).
- Union Cent. Life Ins. Co. v. Wilkes, 47 S. W. 546. Writ of error granted. Reversed and remanded. 92 T. 468.
- United States v. Schwalby, 8 C. A. 679 (29 S. W. 90). Writ of error refused. 87 T. 604.
- Utley v. Smith, 32 S. W. 906. Application dismissed.
- Valdez v. Cohen, 56 S. W. 375. Writ of error refused.
- Van Burkleo v. S. W. Mfg. Co., 39 S. W. 1085. Writ of error refused.
- Van Winkle Gin & Mach. Co. v. Citizens Bank (no published opinion). Writ of error granted. Reversed and rendered. 89 T. 147.
- Van Zandt v. Brantley, 16 C. A. 420 (42 S. W. 617). Writ of error refused.
- Vickers v. Kennedy, 34 S. W. 458. Writ of error refused.
- Vickery v. Crawford, 55 S. W. 560 (93 T. 373). Certified questions. 57 S. W. (C. A.) 326.
- Vidor v. Rawlins (no published opinion). Writ of error granted. Reversed and judgment of district court affirmed. 93 T. 259.

- Vieno v. Gibson, 20 S. W. 717. Writ of error granted. Affirmed. 85 T. 432.
- Villereal v. McLaughlin, 1 T. C. R. 94. Writ of error refused. 62 S. W. 98.
- Vineyard v. Brundrett, 17 C. A. 147 (42 S. W. 232). Writ of error refused.
- Vineyard v. O'Connor, 35 S. W. 1084. Writ of error granted. Reversed and remanded. 90 T. 59.
- Vinson v. Vesey, 56 S. W. 593. Writ of error refused.
- Virginia Fire & Marine Ins. Co. v. Cannon, 18 C. A. 588 (45 S. W. 945). Writ of error refused.
- Voght v. Bexar County, 5 C. A. 272 (23 S. W. 1044). Writ of error refused.
- Voght v. Bexar County, 16 C. A. 567 (42 S. W. 127). Writ of error refused. 91 T. 285.
- Voight v. Railway, 1 T. C. R. 634. Application granted. 59 S. W. 578. Reversed. 60 S. W. 658.
- Vollmer v. San Antonio & G. S. Ry. Co., 47 C. W. 378. Writ of error granted. Afterwards dismissed. 92 T. 444.
- Von Koehring v. White, 15 C. A. 646 (40 S. W. 63). Writ of error refused.
- Voorhies v. Fry, 52 S. W. 580. Application dismissed.
- Votaw v. N. Y. & T. Ld. Co., 16 C. A. 585 (42 S. W. 138). Application dismissed. 91 T. 282.
- Waco Water & L. Co. v. City of Waco, 27 S. W. 675. Certified questions. Certificate dismissed. 86 T. 661 (26 S. W. 943).
- Wade v. Odle, 54 S. W. 786. Writ of error refused.
- Wadkins v. Watson, 21 S. W. 636. Certified questions. 86 T. 194 (24 S. W. 385).
- Wagner & Chabot v. Westchester F. I. Co., 48 S. W. 49. Writ of error granted. Reversed and remanded. 92 T. 549.
- Wagner v. Marple, 10 C. A. 505 (31 S. W. 691). Writ of error refused.
- Waggner v. Haskell, 35 S. W. 711. Certified questions. 89 T. 435 (35 S. W. 1).
- Waggoner v. Flack, 21 C. A. 449 (52 S. W. 584). Writ of error refused. 92 T. 633 (51 S. W. 330).
- Waggoner v. Wise County, 17 C. A. 220 (43 S. W. 836). Writ of error refused.
- Waggoner & Son v. Whaley, 21 C. A. 1 (50 S. W. 153). Writ of error refused.

- Walker v. Barnard & Co.**, 8 C. A. 14 (27 S. W. 726). Writ of error refused.
- Walker v. Cole**, 27 S. W. 882; 28 Id. 1012. Writ of error granted. Affirmed. 89 T. 323.
- Walker v. Loring**, 34 S. W. 405. Writ of error granted. Reversed and remanded. 89 T. 668.
- Walker v. Peterson**, 42 S. W. 1045. Writ of error refused.
- Walker v. Pittman**, 18 C. A. 519 (46 S. W. 117). Writ of error refused.
- Wallace v. Bagley**, 6 C. A. 484 (26 S. W. 519). Writ of error refused.
- Wallace v. Byers Bros.**, 14 C. A. 574 (38 S. W. 228). Writ of error refused.
- Wallace v. Turner** (memorandum opinion, unpublished). Writ of error refused.
- Waller v. Leonard**, 34 S. W. 799. Writ of error granted. Reversed and remanded. 89 T. 507.
- Wallis v. Stuart**, 92 T. 568 (50 S. W. 567). Certified questions. 51 S. W. (C. A.) 1135.
- Walters v. Tex. Bldg. & L. Assn.**, 8 C. A. 500 (29 S. W. 51). Writ of error refused.
- Walton v. Burnett** (no written opinion). Application dismissed.
- Walton v. Wagoner** (no written opinion). Application dismissed.
- Waples Platter Co. v. Mitchell**, 35 S. W. 200. Writ of error refused.
- Ward v. Green**, 28 S. W. 574. Writ of error granted. Reversed and remanded. 88 T. 177 (30 S. W. 864).
- Ward v. White**, 24 S. W. 312. Certified questions. 86 T. 70 (23 S. W. 981).
- Ward v. Wilson**, 17 C. A. 28 (43 S. W. 833). Writ of error granted. Affirmed. 92 T. 22.
- Ward v. Worsham**, 6 C. A. 22 (24 S. W. 843). Writ of error refused.
- Ware v. Millican**, 30 S. W. 728. Writ of error refused.
- Ware v. Shafer**, 27 S. W. 764. Writ of error granted. Affirmed. 88 T. 44.
- Warner Elevator Mfg. Co. v. Houston**, 28 S. W. 405. Writ of error granted. Reversed and remanded. 88 T. 489.
- Warner Elevator Mfg. Co. v. Maverick** (see *Warner Elevator Mfg. Co. v. Houston*).

- Warren v. Lane (no opinion below). Writ of error refused.
 Warren & Sons v. McCutcheon, 16 C. A. 167 (40 S. W. 826).
 Writ of error refused.
- Washington v. Loessin. Writ of error refused, June 28, 1900.
 Washington v. M., K. & T. Ry. Co., 36 S. W. 773. Writ
 of error granted. Reversed and remanded. 90 T. 314.
 Washington v. Tex. & S. F. Ry. Co., 22 C. A. 189 (54 S.
 W. 1092). Writ of error refused.
- Washington Life Ins. Co. v. Gooding, 19 C. A. 490 (49 S.
 W. 123). Writ of error refused.
- Waters v. East, 56 S. W. 939. Writ of error refused.
- Waters-Pierce Oil Co. v. State, 19 C. A. 1 (44 S. W. 936).
 Writ of error refused.
- Water Works Co. v. City of San Antonio, 48 S. W. 205. Writ
 of error refused.
- Watkins v. Junker, 38 S. W. 1129. Writ of error granted.
 Reversed and rendered. 90 T. 584.
- Watkins v. Markham, 36 S. W. 145. Writ of error refused.
- Watkins v. Sansom, 22 C. A. 178 (54 S. W. 1096). Writ of
 error refused.
- Watkins v. Smith (no published opinion). Writ of error
 granted. Reversed and remanded. 91 T. 589.
- Watkins Land Mtg. Co. v. Abbott, 14 C. A. 447 (37 S. W.
 252). Writ of error refused.
- Watkins Land Mtg. Co. v. Phillips, 38 S. W. 270. Writ of
 error granted. Affirmed and rendered. 90 T. 195.
- Watkins Land Mtg. Co. v. Quisenberry (no published opinion).
 Writ of error granted. Reversed and judgment of dis-
 trict court affirmed. Quisenberry v. Watkins Ld. Mtg.
 Co., 92 T. 247.
- Watson v. DeWitt County, 19 C. A. 150 (46 S. W. 1061).
 Writ of error refused.
- Watson v. Watson, 21 C. A. 348 (51 S. W. 1105). Writ of
 error refused.
- Waxahachie Nat. Bank v. Beilharz, ——. Reversed. 62
 S. W. 743.
- Wear v. Gillon, 40 S. W. 817. Writ of error refused.
- Wear & Boogher D. G. Co. v. Crews, 57 S. W. 73. Writ of
 error refused.
- Weatherford M. W. & N. W. Ry. Co. v. Duncan, 10 C. A. 479
 (31 S. W. 562). Writ of error granted. Affirmed. 88
 T. 611.
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- Weatherford M. W. & N. W. Ry. Co. v. Granger, 22 S. W. 70, 959. Writ of error granted. Reversed and remanded. 86 T. 350.
- Weatherford M. W. & N. W. Ry. Co. v. Wood, 29 S. W. 411. Writ of error granted. Affirmed. 88 T. 191.
- Weaver v. Simmons, 15 C. A. 154 (38 S. W. 1140). Writ of error refused.
- Webb v. Haskit, 25 S. W. 161. Writ of error refused.
- Webster v. McCarty, 16 C. A. 160 (40 S. W. 823). Writ of error refused.
- Weekes v. City of Galveston, 21 C. A. 102 (51 S. W. 544). Writ of error refused.
- Weems v. Watson, 39 S. W. 135. Writ of error granted. Reversed and remanded in part. 91 T. 35.
- Weil, Dreyfus & Co. v. Mittenthal, 45 S. W. 1131. Writ of error refused.
- Weir Plow Co. v. Armentrout, 9 C. A. 117 (28 S. W. 1045). Writ of error refused.
- Weiss v. Dittman, 23 S. W. 229. Certified questions. 87 T. 614 (30 S. W. 863).
- Welch v. Phelps & Bigelow Windmill Co., 37 S. W. 175. Certified questions. 89 T. 653 (36 S. W. 71). (See 27 S. W. 696, and 34 S. W. 302).
- Welder v. Lambert, 44 S. W. 281; 45 Id. 1132. Writ of error refused.
- Welder v. McComb, 10 C. A. 85 (30 S. W. 822). Writ of error refused.
- Wells v. Christopher (oral opinion). Writ of error refused.
- Wells v. Hardy, 21 C. A. 454 (51 S. W. 503). Writ of error refused.
- Wells v. Huss, 44 S. W. 33. Writ of error refused.
- Wells-Fargo Express Co. v. Fuller, 13 C. A. 610 (35 S. W. 824; 23 S. W. 412). Writ of error refused.
- Wells-Fargo & Co's Express v. Waites, 1 T. C. R. 480. Dismissed. 60 S. W. 582.
- Wells-Fargo Express Co. v. Fuller, 4 C. A. 213 (23 S. W. 412). Application dismissed. (See same case, Third district).
- Wentworth v. King, 49 S. W. 696. Application dismissed.
- Werner v. Trautwein & Wolters, 1 T. C. R. 609. Writ of error refused. 61 S. W. 447.

- West v. El Campo Ld. Co., 32 S. W. 424. Writ of error refused.
- West v. Grand Lodge A. O. U. W., 14 C. A. 471 (37 S. W. 966). Writ of error refused.
- Westchester Fire Ins. Co. v. Wagner, 10 C. A. 398 (30 S. W. 959). Application dismissed.
- Westchester Fire Ins. Co. v. Wagner, 57 S. W. 876. Writ of error refused.
- West End Town Co. v. Grigg, 54 S. W. 904. Writ of error granted. Reversed and rendered. 93 T. 451.
- Western Assurance Co. v. Kemendo, 57 S. W. 293. Reversed. 60 S. W. 661.
- Western U. Tel. Co. v. Anderson, 37 S. W. 619. Writ of error refused.
- Western U. Tel. Co. v. Bedell, 57 S. W. 706. Writ of error refused.
- Western U. Tel. Co. v. Birchfield, 14 C. A. 664 (38 S. W. 635). Writ of error refused.
- Western U. Tel. Co. v. Boots, 10 C. A. 540 (31 S. W. 825). Writ of error refused.
- Western U. Tel. Co. v. Burgess, 43 S. W. 1033. Writ of error granted. Reversed and remanded. 92 T. 125.
- Western U. Tel. Co. v. Burgess, 54 S. W. 1021. Certified questions. 56 S. W. (C. A.) 237.
- Western U. Tel. Co. v. Carter, 20 S. W. 834. Writ of error granted. Reversed and rendered. 85 T. 580.
- Western U. Tel. Co. v. Carter, 58 S. W. 198. Writ of error refused.
- Western U. Tel. Co. v. Carver, 15 C. A. 547 (39 S. W. 1021). Writ of error refused.
- Western U. Tel. Co. v. Clark, 38 S. W. 225. Writ of error refused.
- Western U. Tel. Co. v. Coffin (no published opinion). Writ of error granted. Reversed and remanded. 88 T. 94.
- Western U. Tel. Co. v. Davis, 16 C. A. 268 (41 S. W. 392). Writ of error refused.
- Western U. Tel. Co. v. Downs, 1 T. C. R. 221. Writ of error refused. 62 S. W. 678.
- Western U. Tel. Co. v. Drake, C. A., 13 C. A. 572 (36 S. W. 786). Writ of error refused.

- Western U. Tel. Co. v. Drake, 38 S. W. 632. Writ of error refused.
- Western U. Tel. Co. v. Edmondson, 40 S. W. 622. Writ of error granted. Reversed and rendered. 91 T. 206.
- Western U. Tel. Co. v. Evans, 5 C. A. 55 (23 S. W. 998). Writ of error refused.
- Western U. Tel. Co. v. Gahan, 17 C. A. 657 (44 S. W. 933). Writ of error refused.
- Western U. Tel. Co. v. Gossett, 15 C. A. 52 (38 S. W. 536). Writ of error refused.
- Western U. Tel. Co. v. Griffin, 93 T. 530 (56 S. W. 744). Certified questions. 57 S. W. (C. A.) 327.
- Western U. Tel. Co. v. Grigsby, 29 S. W. 406. Writ of error refused.
- Western U. Tel. Co. v. Guest, 33 S. W. 281. Writ of error refused.
- Western U. Tel. Co. v. Hale, 11 C. A. 79 (32 S. W. 814). Writ of error refused.
- Western U. Tel. Co. v. Hargrove, 14 C. A. 79 (36 S. W. 1077). Writ of error refused.
- Western U. Tel. Co. v. Hearne, 40 S. W. 50. Writ of error refused.
- Western U. Tel. Co. v. Henry, 25 S. W. 1097. Writ of error granted. Reversed and remanded. 87 T. 165.
- Western U. Tel. Co. v. Hill, 26 S. W. 252. Writ of error refused.
- Western U. Tel. Co. v. Jackson, 19 C. A. 273 (46 S. W. 279). Writ of error refused.
- Western U. Tel. Co. v. Jeans, 29 S. W. 1130. Writ of error granted. Reversed and remanded. 88 T. 230.
- Western U. Tel. Co. v. Jobe, 6 C. A. 403 (25 S. W. 168, 1036). Writ of error refused.
- Western U. Tel. Co. v. Johnson, 28 S. W. 124. Writ of error refused.
- Western U. Tel. Co. v. Kinsley, 8 C. A. 527 (28 S. W. 831). Writ of error refused.
- Western U. Tel. Co. v. Lavender, 40 S. W. 1035. Writ of error refused.
- Western U. Tel. Co. v. Linn, 23 S. W. 895. Writ of error granted. Reversed and dismissed. 87 T. 7.
- Western U. Tel. Co. v. Linney, 28 S. W. 234. Application dismissed.

- Western U. Tel. Co. v. Luck, 40 S. W. 753. Writ of error granted. Reversed and remanded. 91 T. 178.
- Western U. Tel. Co. v. Lyles, 42 S. W. 636. Writ of error refused.
- Western U. Tel. Co. v. McLeod, 24 S. W. 815; see 22 Id. 988; 25 Id. 721. Writ of error refused.
- Western U. Tel. Co. v. Motley, 27 S. W. 51. Writ of error granted. Reversed and remanded. 87 T. 38.
- Western U. Tel. Co. v. Murray, 26 S. W. 996. Writ of error refused.
- Western U. Tel. Co. v. Neel. Questions certified. 86 T. 368 (35 S. W. 29). Writ of error refused.
- Western U. Tel. Co. v. Norris, 1 T. C. R. 685. Writ of error refused. 60 S. W. 982.
- Western U. Tel. Co. v. O'Keefe (dismissed without written opinion). Writ of error granted. Reversed and remanded to court of civil appeals. 87 T. 423.
- Western U. Tel. Co. v. O'Keefe, 29 S. W. 1137. Writ of error refused.
- Western U. Tel. Co. v. Patton, 55 S. W. 973. Writ of error refused.
- Western U. Tel. Co. v. Pelzer, 35 S. W. 836. Writ of error refused.
- Western U. Tel. Co. v. Phillips, 2 C. A. 608 (21 S. W. 638). Writ of error refused.
- Western U. Tel. Co. v. Piner, 9 C. A. 152 (29 S. W. 66). Writ of error refused.
- Western U. Tel. Co. v. Porter, 26 S. W. 866. Writ of error refused.
- Western U. Tel. Co. v. Pruett, 35 S. W. 78. Writ of error refused.
- Western U. Tel. Co. v. Russell, 31 S. W. 698; 33 Id. 708. Writ of error refused.
- Western U. Tel. Co. v. Smith, 26 S. W. 216; 30 S. W. 937. Writ of error granted. Reversed and remanded. 88 T. 9.
- Western U. Tel. Co. v. Snodgrass, 1 T. C. R. 381-801. Writ of error refused. 60 S. W. 308; 61 S. W. (C. A.) 1104.
- Western U. Tel. Co. v. Stephens, 2 C. A. 129 (21 S. W. 148). Writ of error refused.
- Western U. Tel. Co. v. Stiles, 35 S. W. 76. Certified questions. 89 T. 312 (34 S. W. 438).

- Western U. Tel. Co. v. Sweetman, 19 C. A. 435 (47 S. W. 676). Writ of error refused.
- Western U. Tel. Co. v. Teague, 36 S. W. 301. Writ of error refused.
- Western U. Tel. Co. v. Thompson, 41 S. W. 1103. Writ of error refused.
- Western U. Tel. Co. v. Turner, 60 S. W. 432. Certified questions.
- Western U. Tel. Co. v. Walker, 26 S. W. 858. On certificate of dissent. Judgment of majority set aside and cause remanded to court of civil appeals. 86 T. 72.
- Western U. Tel. Co. v. Waller, 47 S. W. 396. Writ of error refused.
- Western U. Tel. Co. v. Williford, 2 C. A. 574 (27 S. W. 700). Writ of error refused.
- Western U. Tel. Co. v. Wilson, 51 S. W. 521. Writ of error refused.
- Western U. Tel. Co. v. Wofford, 58 S. W. 627. Reversed. 60 S. W. 546.
- Wettermark v. Campbell, 93 T. 517 (56 S. W. 331). Certified questions. 57 S. W. (C. A.) 904.
- Wetzel v. Simon & Co., 25 S. W. 792; 26 Id. 642. Writ of error granted. Reversed and rendered. 87 T. 403.
- Whately v. Oglesby, 44 S. W. 44. Writ of error refused.
- Whately v. Patton, 10 C. A. 77 (31 S. W. 60). Writ of error refused.
- Wheeler v. First Natl. Bank of Bellville, 41 S. W. 376. Writ of error refused.
- Wheeler v. Riviere 49 S. W. 697. Writ of error refused.
- Wheelock v. Cavit. Certified questions. 91 T. 679 (45 S. W. 796).
- White v. City of San Antonio, 57 S. W. 858. Affirmed and rendered. 60 S. W. 426.
- White v. City of Quanah, 27 S. W. 839. Writ of error granted. Reversed and judgment of district court affirmed. 88 T. 14 (28 S. W. 1065).
- White v. Cole, 9 C. A. 277 (29 S. W. 1148). Writ of error refused. 87 T. 500.
- White v. Dabney, 46 S. W. 653. Writ of error refused.
- White v. Hall, 1 T. C. R. 179. Writ of error granted. 59 S. W. 810; 61 S. W. 385.

- White v. H. & T. C. Ry. Co., 46 S. W. 382. Application dismissed.
- White v. Pocos Ld. & Water Co., 18 C. A. 634 (45 S. W. 207). Writ of error refused.
- White v. Pyron, 1 T. C. R. 315. Writ of error refused. 62 S. W. 8.
- White v. Security Mtg. & T. Co., 37 S. W. 623. Writ of error refused.
- White v. Small, 22 C. A. 318 (54 S. W. 915). Writ of error refused.
- White v. Sterzing, 11 C. A. 553 (32 S. W. 909). Writ of error refused.
- White v. Waco Bldg. Assn., 31 S. W. 58. Writ of error refused.
- White Dental Mfg. Co. v. Hertzberg, 92 T. 528 (50 S. W. 122). Certified questions. 51 S. W. (C. A.) 355.
- White S. M. Co. v. Hicks, 33 S. W. 137. Writ of error refused.
- Whitehill v. Shaw, 33 S. W. 886. Writ of error refused.
- Whitfield v. Terrell Compress Co., 1 T. C. R. 91. Writ of error refused. 62 S. W. 116.
- Whitely v. Gen. Elec. Co., 18 C. A. 674 (45 S. W. 959). Writ of error refused.
- Whiteselle & Co. v. Texas Loan Agency, 39 S. W. 194. Writ of error refused.
- Whiteselle v. Texas Loan Agency, 27 S. W. 309. Writ of error refused.
- Whiting v. Dugan, 39 S. W. 148. Writ of error refused.
- Whitmire v. State, 47 S. W. 293. Writ of error refused.
- Whitner v. Belknap. Certified questions. 89 T. 273 (34 S. W. 594).
- Whittaker v. Big Sandy Lumber Co., 46 S. W. 263. Writ of error granted. Reversed and judgment of district court affirmed. 92 T. 216.
- Wichita Valley Ry. Co. v. Peery, 27 S. W. 751. Writ of error granted. Reversed and remanded. 87 T. 597.
- Wichita Valley Ry. Co. v. Peery, 32 S. W. 335. Writ of error refused.
- Wicker v. Ins. Co. of N. Am. (see Ins. Co. of N. Am. v. Wicker).
- Wiggins v. Bisso (no published opinion). Writ of error granted. Reversed and remanded. 92 T. 219.

- Wiggins v. Blackshear**, 24 S. W. 918. Writ of error granted. Reversed and rendered. 86 T. 665.
- Wilcox v. First Natl. Bank of Austin**, 52 S. W. 560. Writ of error granted. Affirmed. 93 T. 322.
- Wilcox v. S. A. & A. P. Ry. Co.**, 11 C. A. 487 (33 S. W. 379). Writ of error refused.
- Wilcox v. Tennant**, 13 C. A. 220 (35 S. W. 865). Writ of error refused.
- Wilder & Co. v. McConnell**, 43 S. W. 807. Writ of error granted. Affirmed. 91 T. 600.
- Wilkins v. Burns**, 25 S. W. 431. Writ of error refused.
- Williams v. Chambers, Roy & Co.**, 26 S. W. 270. Writ of error refused.
- Williams v. Cleveland & Co.**, 18 C. A. 133 (44 S. W. 689). Writ of error refused.
- Williams v. Drummond Tob. Co.**, 17 C. A. 635 (44 S. W. 185). Writ of error refused.
- Williams v. Fletcher** 1 T. C. R. 658. Writ of error refused. 62 S. W. 1082.
- Williams v. Hardie**, 21 S. W. 267. Writ of error granted. (Corzine's Heirs v. Williams). Affirmed. 85 T. 499.
- Williams v. Howard**, 10 C. A. 527 (31 S. W. 835). Writ of error refused.
- Williams v. League**, 44 S. W. 570. Writ of error refused.
- Williams v. Lumpkin**, 26 S. W. 108. Writ of error refused. 86 T. 641.
- Williams v. McMillan** (no written opinion). Application dismissed.
- Williams v. Moore**, 6 C. A. 340 (25 S. W. 1010). Writ of error refused.
- Williams v. Noland**, 10 C. A. 629 (32 S. W. 328). Writ of error refused.
- Williams v. Planters & M. Natl. Bank**, 44 S. W. 617. Writ of error granted. Reversed and remanded. 91 T. 651.
- Williams v. Pollard**, 28 S. W. 1020. Writ of error refused.
- Williams v. Sapicha**, 61 S. W. 115. Certified questions. 62 S. W. (C. A.) 72.
- Williams v. Tex. Mid. Ry. Co.**, 22 C. A. 278 (55 S. W. 130). Writ of error refused.
- Williamson v. Conner** (no published opinion). Writ of error granted. Reversed and remanded. 92 T. 581.

- Williamson v. Huffman, 19 C. A. 314 (47 S. W. 276). Writ of error refused.
- Willis v. Bank of Daingerfield, 30 S. W. 81. Writ of error refused.
- Willis v. Burke, 7 C. A. 239 (27 S. W. 217). Writ of error refused.
- Willis v. Chowning, 18 C. A. 625 (46 S. W. 45). Writ of error. refused.
- Willis v. Downs, 46 S. W. 920. Writ of error refused.
- Willis Exrs. v. Moore, 33 S. W. 691. Writ of error refused. 89 T. 19.
- Willis v. Munger I. C. M. Mfg. Co., 13 C. A. 677 (36 S. W. 1010). Writ of error refused.
- Willis v. Sanger Bros., 15 C. A. 655 (40 S. W. 229). Writ of error refused.
- Willis v. Smith, 17 C. A. 543 (43 S. W. 325). Writ of error refused.
- Willis v. Smith, 39 S. W. 377. Writ of error granted. Reversed and remanded. 90 T. 635.
- Willis v. Sommerville, 3 C. A. 509 (22 S. W. 781). Writ of error refused.
- Willis v. White, 29 S. W. 818. Writ of error refused.
- Willoughby v. Townsend, 51 S. W. 335. Writ of error granted. Reversed and rendered. 93 T. 80.
- Wilmurth v. Tompkins, 22 C. A. 87 (53 S. W. 833). Application dismissed.
- Wilson v. Bristley, 13 C. A. 200 (35 S. W. 837). Writ of error refused.
- Wilson v. Daggott, 31 S. W. 717. Certified questions. 88 T. 375 (31 S. W. 618).
- Wilson v. Johnson, ——. Affirmed. 60 S. W. 243.
- Wilson v. Lowrie, 40 S. W. 854. Writ of error refused.
- Wilson v. Smith, 17 C. A. 188 (43 S. W. 1086). Application dismissed.
- Wilson v. Vick, 51 S. W. 45. Writ of error granted. Reversed and remanded. 93 T. 88.
- Wilson Hardware Co. v. Anderson K. & B. Co., 22 C. A. 229 (54 S. W. 928). Writ of error refused.
- Windon v. Howard, 26 S. W. 175. Writ of error granted. Reversed and judgment of district court affirmed. 86 T. 560.
- Winstead v. Evans, 33 S. W. 580. Application dismissed.

- Winston v. City of Fort Worth, 47 S. W. 740. Writ of error refused.
- Winston v. Masterson, 27 S. W. 691. Certified questions. 87 T. 200 (27 S. W. 768).
- Winter v. Texas Ld. & L. Co., 54 S. W. 802. Writ of error granted. Reversed and judgment of district court affirmed. 93 T. 560.
- Wise County Natl. Bank v. Knox, 54 S. W. 276. Writ of error refused.
- Withrow v. Adams, 4 C. A. 438 (23 S. W. 437). Writ of error refused.
- Woeltz v. Woeltz, 57 S. W. 35. Certified questions. 57 S. W. (C. A.) 905. See 58 S. W. 943.
- Woessner v. Cottam & Co., 19 C. A. 611 (47 S. W. 678). Writ of error refused.
- Wofford v. Farmer, 40 S. W. 739. Writ of error granted. Affirmed. 90 T. 651.
- Woldert v. Nedderhut Packing & Prov. Co., 18 C. A. 602 (46 S. W. 378). Writ of error refused.
- Wolf v. Harris, 20 C. A. 99 (48 S. W. 529). Writ of error refused.
- Womick v. Garner, 30 S. W. 589. Certified questions. Affirmed. 31 S. W. 358.
- Wood v. Amarillo Imp. Co. (see Johnson v. Amarillo Imp. Co., and 88 T. 505).
- Wood v. Cahill, 21 C. A. 38. Application dismissed.
- Wood v. Cahill, 50 S. W. 1072. Application dismissed.
- Wood v. Cole, 1 T. C. R. 759. Writ of error refused. 60 S. W. 992.
- Wood v. City of Victoria, 18 C. A. 573 (46 S. W. 284). Writ of error refused.
- Wood v. McClellan, 53 S. W. 381. Writ of error refused.
- Wood v. Mistretta, 20 C. A. 236 (49 S. W. 236; 50 Id. 135). Writ of error refused.
- Woods v. Hull, 38 S. W. 256. Writ of error refused. 90 T. 228.
- Woodmen of the World v. Fraley, 1 T. C. R. 289. Writ of error granted. 59 S. W. 879-905.
- Woodmen of the World (S. C. W. of W.) v. Rothschild, 15 C. A. 463 (40 S. W. 553). Writ of error refused.

- Wooley v. Sullivan, 43 S. W. 919. Writ of error granted.
Reversed and remanded in part. 92 T. 28.
- Wooters v. City of Crockett, 11 C. A. 474 (33 S. W. 391).
Writ of error refused.
- Word v. Elwood, 37 S. W. 965. Certified questions. 90 T.
130 (37 S. W. 414).
- Workman's Mut. Aid Assn. v. Monroe, 53 S. W. 1029. Writ
of error refused.
- Wright v. City of San Antonio, 50 S. W. 406. Writ of error
refused.
- Wright v. Hardie & Co., 30 S. W. 675. Writ of error granted.
Reversed and remanded. 88 T. 653.
- Wright v. Bell, 59 S. W. 615; 60 S. W. 873; 63 Id. 159.
Application dismissed. 63 S. W. 623.
- Wright v. Jones, 14 C. A. 423 (38 S. W. 249). Writ of
error refused.
- Wright v. Macdonnell, 27 S. W. 1024. Writ of error grant-
ed. Reversed and rendered. 88 T. 140.
- Wright v. Morgan, 37 S. W. 627. Application dismissed.
- Wright v. Nelson, 46 S. W. 251. Writ of error refused.
- Wright v. Sherwood, 37 S. W. 468. Writ of error refused.
- Wright v. Solomon, 46 S. W. 58. Writ of error refused.
- Wright v. Tipton, 46 S. W. 629. Certified questions.
- Wright v. U. S. Mtg. Co. of Scotland, 42 S. W. 789. Appli-
cation dismissed.
- Wright v. U. S. Mtg. Co. of Scotland, 54 S. W. 368. Appli-
cation dismissed.
- Wrought Iron Range Co. v. Martin, 28 S. W. 557. Writ of
error refused.
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